92-24

Supreme Court, U.S.
FILED
JUN 29 1992
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1991

IN THE MATTER OF:

JAMES B. BELL,

Attorney-Respondent.

Petition for Writ of Certiorari

to the

Supreme Court of Illinois

# PETITION FOR WRIT OF CERTIORARI

JAMES B. BELL
Pro Se
11031 So. Sangamon St.
Chicago, IL. 60643
(312) 995-5101

## ISSUES PRESENTED FOR REVIEW

1. Whether the Illinois Supreme Court's decision disbarring Petitioner, James B. Bell, from the practice of law was a violation of Petitioner's right to be free of ex post facto laws, pursuant to Article I, section 10 of the United States Constitution?

2. Whether the Illinois Supreme Court's decision disbarring Petitioner from the practice of law was in violation of Petitioner's right to be free of double jeopardy as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution?

3. Whether the Illinois Supreme Court's decision disbarring Petitioner from the practice of law was in violation of Petitioner's right to equal protection of law as guaranteed by the Fourteenth

Amendment to the United States Constitution?

4. Whether the Illinois Supreme Court's decision disbarring Petitioner from the practice of law was in violation of Petitioner's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution?

5. Whether the Illinois Supreme Court's decision disbarring Petitioner from the practice of law was in violation of Petitioner's rights to a fair trial and/or hearing, and to equal protection of law as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution?

6. Whether the Illinois Supreme Court's decision disbarring Petitioner from the practice of law was in violation of Petitioner's rights to a fair trial

and/or hearing, and to due process of law as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

## PARTIES TO PROCEEDING IN THE ILLINOIS SUPREME COURT

Pursuant to Ch. 110A Ill. Rev. Stat. (hereinafter referred to as Illinois Supreme Court Rules), sec. 751, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (hereinafter referred to as ARDC), acting by and through its Administrator, filed a complaint against Petitioner, James B. Bell, with the Hearing Board of ARDC. Said Hearing Board was and is created and impanelled by Illinois Supreme Court Rule 753.

The petitioner in this cause, before this Honorable Court, is James B. Bell.

The respondent in this matter is the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court, by and through its Administrator.

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## CITATIONS TO OPINION BELOW

This cause was presented to the Illinois Supreme Court pursuant to the normal appellate process set out in the state of Illinois for review of disciplinary matters involving attorneys licensed to practice law in the state of Illinois. (This process is set out in Illinois Supreme Court Rule 753.) This cause of action proceeded before the Illinois Supreme Court on the briefs of the Petitioner herein, and ARDC, and on January 23, 1992, the Illinois Supreme Court issued its decision herein, from which Petitioner seeks review.

The January 23, 1992 decision rendered by the Illinois Supreme Court is unreported as of yet, and appears in the Appendix to this Petition.

On or about March 30, 1992, the

Illinois Supreme Court denied Petitioner's Petition for Rehearing, and the mandate which followed was issued by the Clerk of the Illinois Supreme Court on the 23rd day of April, 1992.

## JURISDICTIONAL STATEMENT

This Honorable Court's jurisdiction is invoked pursuant to 28 U.S.C., sec. 1257. The Illinois Supreme Court's Judgment and Opinion was filed on January 23, 1992. The Illinois Supreme Court's order denying a Petition for Rehearing, which had previously been filed therein, by and on behalf of Petitioner herein, was filed on March 30, 1992. Pursuant to 28 U.S.C., sec. 2101, United States Supreme Court Rules 10.1(b) and 13.1, this Petition for a Writ of Certiorari is being timely filed and is appropriate for consideration by this Court.

## CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE I, Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts, or grant any Title of Nobility. (U.S. Const. Art. I, sec. 10.)

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be

subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation. (U.S. Const. amend. V.)

AMENDMENT VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. (U.S. Const. Amend. VI.)

**AMENDMENT XIV. Section 1.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. Amend. XIV. sec. 1.)

## STATEMENT OF THE CASE

On or about January 26, 1987, the ARDC initiated proceedings, pursuant to Illinois Supreme Court Rule 761, against Petitioner, as a result of petitioner having been convicted on March 27, 1980, in the United States District Court for the Middle District of Tennessee, of two counts in violation of 18 U.S.C., sec. 1014.[1] At the time of Petitioner's convictions, Illinois Supreme Court Rule 761, in its entirety, read as follows:

> "761. (Supreme Court Rule 761). Suspension upon Conviction of Certain Crimes.
>
> "If an attorney admitted to practice in this State is convicted in any court of any crime involving fraud or moral

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1. Originally, Petitioner was charged with five counts of violating 18 U.S.C., sec. 1014, said charges being brought by indictment number 79-30209 in the U.S. District Court for the Middle District of Tennessee. Three of the counts contained in said indictment were dismissed, while the remaining two resulted in convictions.

turpitude, whether the conviction results from a plea of guilty or of nolo contendere or from judgment after trial, and regardless of the pendency of an appeal or any other post-conviction proceedings, the Administrator shall file a petition with the court alleging the fact of such conviction and praying that the attorney be suspended from the practice of law until further order of the court. A certified copy of the judgment of conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged. Upon receipt of the petition the court shall issue a rule to show cause why the attorney should not be suspended from the practice of law until the further order of the court. After consideration of the petition and the answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until further order of the court.

"In any case in which the court has entered an order suspending an attorney

> until further order of the court by reason of his conviction of a crime, pursuant to this rule, a further hearing shall be conducted to determine whether the crime warrants discipline, and, if so, the extent thereof. If the attorney has appealed from his conviction, the hearing shall be delayed until completion of the appellate process. If after the completion of the appellate process the conviction has not been reversed, the hearing shall be held within 30 days after the mandate is filed in the trial court.
>
> "In all hearings conducted pursuant to this rule, proof of conviction is conclusive of the attorney's guilt of the crime.
>
> "All hearings contemplated by this rule shall be held before a Hearing Board." (Ch. 110A Ill. Rev. Stat., sec. 761, as amended effective Oct. 1, 1975)

On February 12, 1987, the Illinois Supreme Court issued a rule to show cause why Petitioner herein, should not be suspended from the practice o law, pursuant

to Illinois Supreme Court Rule 761. Petitioner fully responded to the rule to show cause, and, on July 15, 1987, the Illinois Supreme court discharged the rule to show cause, without the imposition of any disciplinary action against Petitioner.

On June 15, 1988, the Administrator of the ARDC instituted a disciplinary action against Petitioner by filing a seventeen (17) count complaint against Petitioner, the same being filed before the Hearing Board of the ARDC, also pursuant to Illinois Supreme Court Rule 761. Included in this complaint were the same charges contained in the Administrator's petition previously filed before the Illinois Supreme Court which gave rise to that court's issuance of a rule to show cause, as hereinabove mentioned.

At the time of the filing of the com-

plaint with the Hearing Board of the ARDC, Illinois Supreme Court Rule 761. as a result of a modification of the same, read, in its entirety, as follows:

> "RULE 761. Conviction of Crime
>
> (a) Notification. It is the duty of an attorney admitted in this State who is convicted in any court of a felony or misdemeanor to notify the Administrator of the conviction in writing within 30 days of the entry of judgment of conviction. The notification is required:
>
> (1) Whether the conviction results from a plea of guilty or of nolo contendere or from a judgment after trial; and
>
> (2) Regardless of the pendency of an appeal or other post-conviction proceeding.
>
> (b) Conviction of Crime Involving Moral Turpitude. If an attorney is convicted of a crime involving fraud or moral turpitude, the Administrator shall file a petition with the court alleging the fact of such conviction and praying that the attor-

ney be suspended from the practice of law until further order of the court. A certified copy of the judgment of conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged. Upon receipt of the petition the court shall issue a rule to show cause why the attorney should not be suspended from the practice of law until the further order of the court. After consideration of the petition and the answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until further order of the court.

(c) Conviction of Crime Not Involving Moral Turpitude. If an attorney is convicted of a crime that does not involve fraud or moral turpitude, the Administrator shall refer the matter to the Inquiry Board.

(d) Hearing. Where an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof.

(1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the Hearing Board alleging the fact of conviction.

(2) If the attorney has appealed from the conviction, the hearing shall be delayed until completion of the appellate process unless the attorney requests otherwise. If the conviction has not been reversed, the attorney shall notify the Administrator within 30 days of the mandate being filed in the trial court that the conviction has been affirmed, the Administrator shall file a complaint with the Hearing Board as described in (1) above.

(e) Time of Hearing. Hearings pursuant to this rule shall commence within 60 days after the complaint is filed.

(f) Proof of Conviction. In any hearing conducted pursuant to this rule, proof of conviction is conclusive of the attorney's guilt of the crime.

(g) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided

in Rule 753 for disciplinary cases. (Amended, effective July 1, 1984)" (Ch. 110A Ill. Rev. Stat., sec. 761, amended effective July 1, 1984.)

On April 25, 1989, the Hearing Board of the ARDC commenced a hearing of the issues joined in this matter. After the taking of testimony of seven witnesses, the Hearing Board continued this matter until May 17, 1989, whereupon the Hearing Board received the additional testimony of one witness.[2]

On September 15, 1989, the Hearing Board of the ARDC issued its report and recommendation in this cause, and found that the Administrator had sustained its burden of proof in counts I through X, XII, XIII and XV of the complaint in this matter. Included in these counts which

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2. Due to a dental emergency suffered by Petitioner, Petitioner was not present at the continued hearing before the Hearing Board on May 17, 1989.

the Hearing Board found that the Administrator had sustained its burden of proof by clear and convincing evidence, were counts I through IV which consisted of the facts contained in the Administrator's petition for a rule to show cause, hereinabove mentioned. Further, the Hearing Board, in its report and recommendation, recommended that Petitioner be disbarred.

Pursuant to Illinois Supreme Court Rule 753, Petitioner filed his exceptions to the report and recommendation of the Hearing Board with the Review Board of the ARDC. On June 8, 1990, the Review Board sustained the report and recommendation of the Hearing Board.

On June 28, 1990, Petitioner moved the Illinois Supreme Court to allow his exceptions filed before the Review Board of the ARDC to stand as his exceptions to

the report and recommendation of the Review Board of the ARDC. This motion was granted by the Illinois Supreme Court, and the matter proceeded on briefs filed by Petitioner herein, and the Administrator of the ARDC.

On January 23, 1992, the Illinois Supreme Court issued its opinion disbarring Petitioner. In so doing, the Illinois Supreme Court ruled, inter alia, that:

> 1. "Rule 761 is a procedural rule governing ARDC procedures for initiating certain disciplinary proceedings. Being procedural in nature, the version of Rule 761 which was in effect at the time the Administrator filed his complaint (1988) is the governing rule." (See App.-31 of Appendix, **In re: James Bernard Bell**, January 23, 1992.)

and

> 2. "Illinois disciplinary proceedings are neither criminal nor penal in nature.... Therefore, ex post facto clauses do not

apply to disciplinary proceedings." (See App.-33-34 of Appendix, **In re: James Bernard Bell**, January 23, 1992.)

II.

During the course of the Administrator's investigation of certain matters which were ultimately included in the Administrator's complaint, i.e., counts X, XI and XV, the Administrator served Petitioner with several subpoenas duces tecum which directed and commanded Petitioner to produce and tender to the Administrator all files, records, etc., which related to Petitioner's representation of two clients: to wit, Wanda Ferguson and Wynrick Jones. Petitioner, pursuant to said subpoenas duces tecum, did produce and tender to the Administrator said files. These facts occurred prior to the date which the Administrator of the

ARDC filed his complaint against Petitioner commencing this cause of action, i.e., June 15, 1988. In spite of numerous requests for the return of said files, the Administrator refused and failed to return Petitioner's files until three days after the Hearing Board of the ARDC had taken the testimony of the witnesses to whom said files related.

III.

On or about February 13, 1992, Petitioner filed a petition for rehearing before the Illinois Supreme Court, which was denied by order of said court on or about March 30, 1992. On or about the 23rd day of April, 1992, the Clerk of the Illinois Supreme Court issued its mandate as a result of the opinion rendered in this cause by the Illinois Supreme Court.

## ARGUMENT

### I.

### THE ILLINOIS SUPREME COURT'S DECISION CONFLICTS WITH THE DECISIONS OF THIS HONORABLE COURT

At the very core of this cause of action lies a central, and almost controlling issue which the Supreme Court of Illinois answered and decided in direct conflict with the decisions of this Honorable Court. That issue, simply stated, is as follows: Whether disciplinary proceedings instituted by a state, against a lawyer licensed to practice law in that state, are of a quasi-criminal nature? The Illinois Supreme Court explicitly answered this issue in the negative, and assigned an undefined nature to causes of action of this type. "Illinois disciplinary proceedings are neither criminal nor penal in nature.... Therefore, ex

post facto clauses do not apply to disciplinary proceedings." (Quotations and citations omitted) (See App.-33-34 of Appendix; opinion of Illinois Supreme Court in **In re: James Bernard Bell**, dated January 23, 1992.)

However, this Court, long ago, had decided this issue in quite a different manner. In **In Re Ruffalo** (1968), 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117, this Court was presented this very issue, and stated,

> "Disbarment, designed to protect the public, is a punishment imposed on the lawyer...." (Citations omitted.)
>
> "These are adversary proceedings of a quasi-criminal nature." (Citations omitted.) (at 88 S.Ct. 1226)

Also see **Spevack v. Klein** (1967), 385 U.S.511. 87 S. Ct. 625, 17 L.Ed.2d 574, and **In Re Primus** (1978), 436 U.S. 412,

98 S.Ct. 1893, 56 L.Ed.2d 417.

Given that disbarment proceedings may result in the imposition of punishment and/or penalty, and that they are adversary proceedings of a quasi-criminal nature, it necessarily follows that a lawyer situated in the place of Petitioner should be afforded all of the protections of the Constitution of the United States, including those of Article I, section 10, secured and guaranteed Petitioner by and through Amendment XIV thereof. Obviously, as indicated above, the Illinois Supreme Court decided the instant cause by totally ignoring the rights guaranteed and secured to Petitioner of said constitutional provisions.

Petitioner asserts that, in light of the ruling previously issued by the Illinois Supreme court which discharged

the rule to show cause why the petitioner should not be suspended from the practice of law in Illinois, the inclusion of counts I through V of the Administrator's complaint against Petitioner, which commenced this cause of action before the Hearing Board, and, which was based upon Illinois Supreme Rule 761, as amended effective July 1, 1984, was an imposition of an ex post facto law, in violation of Article I, sec. 10 of the United States Constitution.

In viewing this assertion by Petitioner, the issue presented is whether Illinois Supreme Court Rule 761 was and is an ex post facto law under the circumstances presented in this cause. The Illinois Supreme Court ruled that "Rule 761 is a procedural rule governing ARDC procedures for initiating certain disci-

plinary proceedings. Being procedural in nature, the version of Rule 761 which was in effect at the time the Administrator filed his complaint (1988) is the governing rule.... Therefore, ex post facto clauses do not apply to disciplinary proceedings." (Citations omitted) (See App.-31-34 of Appendix In re: James Bernard Bell[3], January 23, 1992.)

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3. It should also be noted that the Illinois Supreme Court found that Petitioner did not comply with Illinois Supreme Court Rule 761 (a) as amended effective July 1, 1984, which required Petitioner to report his conviction to the Administrator of the ARDC within thirty (30) days of the entry of the judgment of conviction. However, it is obvious that Petitioner could not have complied with this provision within thirty (30) days of the entry of said judgment, simply because this section of Illinois Supreme Court Rule 761 was not in existence until the amended rule, effective on the date hereinabove mentioned, became effective. Petitioner's judgment of conviction was entered on March 27, 1980, which was more than four years prior to the existence of Illinois Supreme Court Rule 761 (a).

The mere fact that a statute takes a seemingly procedural form does not automatically exempt it from being a violation of the ex post facto prohibition. (See **Weaver v. Graham** (1980), 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17.) This Court, in **Weaver**, supra., stated clearly as follows:

> "The ex post facto prohibition forbids the Congress and the States to enact any law 'which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.' (Citations omitted.) Through this prohibition, the Framers sought to assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed. (Citations omitted.) The ban also restricts governmental power by restraining arbitrary and potentially vindictive legislation. (Citations omitted.)
>
> "In accord with these purposes, our decision prescribe two critical elements must be present for a criminal or penal law to be ex post facto: it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offen-

> der affected by it. (Citations omitted.) (at 101 S.Ct. 964)

In the instant cause, it is clear that Illinois Supreme Court Rule 761, amended effective July 1, 1984, is retrospective, and applies to events occurring before its enactment, when applied to the instant cause.

Secondly, it should also be clear that the application of this amended rule also placed Petitioner at a disadvantage at the point in time when the Illinois Supreme Court discharged its rule to show cause why Petitioner should not be suspended from the practice of law, effective immediately. Under the provisions of Illinois Supreme Court Rule 761, which was in full force and effect on and before the operative date of March 27, 1980, once the Illinois Supreme Court so discharged its rule to show cause without imposing

discipline on Petitioner, there was no statute, rule or any other body of law which authorized the Administrator to file such a complaint before the Hearing Board of the ARDC, as was done herein. However, under the amended rule, effective July 1, 1984, the filing of such a complaint was mandatory upon the Administrator. Pursuant to the terms of Illinois Supreme Court Rule 761 which was in effect on and before March 27, 1980, the Administrator was authorized and directed to file a complaint with the Hearing Board of the ARDC, only in the following eventuality:

> "In any case in which the court has entered an order suspending an attorney until further order of the court by reason of his conviction of a crime, pursuant to this rule, a further hearing shall be conducted to determine whether the crime warrants discipline, and, if so, the extent thereof. If the attorney has appealed from his conviction, the hearing shall

> be delayed until completion of the appellate process. If after the completion of the appellate process the conviction has not been reversed, the hearing shall be held within 30 days after the mandate is filed in the trial court. Amended eff. Oct. 1, 1975." Ch. 110A Ill. Rev. Stat., sec. 761, (1979).

This version of Rule 761 is totally silent in regards to the eventuality which is present in the instant cause, i.e., the continued prosecution of a lawyer after the Supreme Court has issued a rule to show cause why that lawyer should not be suspended from the practice of law, effective immediately, and, after a full and complete opportunity is given for each party to be heard on said rule to show cause, the court dismisses and discharges said rule to show cause, without the imposition of any discipline upon that attorney. The absence of any language which speaks to this eventuality in this version

of Illinois Supreme Court Rule 761 tends to suggest that the discharging of the rule to show cause, without the imposition of discipline upon Petitioner, was and is tantamount to a disposition of the entire cause of action, from which neither party had the right to appeal. To expose Petitioner to continued prosecution for the same operative facts, is clearly to disadvantage Petitioner.

Thus, it appears obvious that the two critical elements which must be present for a criminal or penal law to be ex post facto, are present in the instant cause, in reference to Illinois Supreme Court Rule 761, as amended effective July 1, 1984, as the same has been applied to the facts herein.

The Illinois Supreme Court's decision in this cause is very comparable to the argument made by the respondent in Weaver

v. Graham, supra. In response to the argument that the Florida statute which was the focal point of that decision, was not retrospective, this Court stated clearly that:

> "....This argument fails to acknowledge that it is the effect, not the form, of the law that determines whether it is ex post facto." (at 101 S.Ct. 965.)

In the instant cause, the effect of applying Illinois Supreme Court Rule 761, amended July 1, 1984, is clearly that of exposing Petitioner to quasi-criminal liability for acts occurring retrospectively, when he would not have otherwise been so exposed to such liabilities which could, and did, lead to the imposition of punishment and/or penalty upon Petitioner.

II.

**PETITIONER HAS BEEN DENIED HIS RIGHT TO BE FREE OF DOUBLE JEOPARDY AS GUARANTEED TO PETITIONER BY AMENDMENTS V AND XIV OF THE UNITED STATES CONSTITUTION**

In addition to the manner in which Petitioner has been disadvantaged by the application of Illinois Supreme Court Rule 761, as amended effective July 1, 1984, as described hereinabove, Petitioner has also been placed at a disadvantage by the application of said amended rule with regards to his right to be free of being placed twice in jeopardy for the same offense. Petitioner contends that the applicable rule which should have controlled this matter was Illinois Supreme Court Rule 761, amended effective October 1, 1975, which was in full force and effect on March 27, 1980. Under this

version of Rule 761, i.e., amended effective October 1, 1975, the Administrator of the ARDC was to have filed a petition for a rule to show cause why Petitioner should not be suspended from the practice of law, with the appropriate exhibits attached thereto, as the Administrator did herein. Upon receipt of this petition, the Illinois Supreme Court did issue a rule to show cause against Petitioner.

Petitioner asserts that, in reference to his exposure to discipline being imposed in a quasi-criminal cause of action, i.e., a disciplinary proceeding, jeopardy attached at the moment the Illinois Supreme Court issued the rule to show cause against Petitioner. It was at this point that Petitioner was obliged to stand mute in the face of the charges made

by the Administrator of the ARDC, or file an answer to said petition, and thereby submit facts to the Illinois Supreme Court contesting the facts and prayer for relief contained in the Administrator's petition. Petitioner decided to take the latter course, and did submit an answer to said rule to show cause.

It must be assumed that the Illinois Supreme Court followed its own rule and considered the facts contained in the petition and the answer to the rule to show cause. Whatever the reason, and after this considered process, the Illinois Supreme Court elected to discharge said rule to show cause, without the imposition of discipline upon Petitioner. Under the version of Illinois Supreme Court Rule 761, amended effective October 1, 1975, this process as described by said rule, when followed, was in

actuality, a trial of the facts surrounding the charges contained in the Administrator's petition for a rule to show cause. Petitioner contends that, under this version of Illinois Supreme Court Rule 761, once the court exercised its discretion in such a manner as to discharge its previously issued rule to show cause without the imposition of discipline upon Petitioner, that ruling was the legal equivalent of a finding of not guilty by the trier of fact in any typical criminal case.

This contention seems obvious in light of the next and second paragraph of said rule, which states, in part, the following:

> "In any case in which the court has entered an order suspending an attorney until further order of the court by reason of his conviction of a crime, pursuant to this rule, a further

> hearing shall be conducted to determine whether the crime warrants discipline, and if so, the extent thereof...." (Ch. 110A Ill. Rev. Stat., sec. 761, amended effective Oct. 1, 1975)

Obviously, a further hearing is only contemplated by this rule in the event that the Illinois Supreme Court enters an order suspending an attorney until further order of the court. Therefore, conversely it must be so that, should the Illinois Supreme Court, acting as a trier of fact in this limited process, determine that a lawyer should not be suspended under these circumstances, no further hearing is allowed by said Supreme Court Rule. It must also be stated that there was and is no other Illinois Supreme Court Rule, statute, etc., which authorizes the Administrator of the ARDC to follow any procedure contrary to what is set out in the rules discussed hereinabove.

Therefore, Petitioner asserts that, to try Petitioner a second time before a hearing board was a violation of Petitioner's right to be free of being placed twice in jeopardy for the same offense, as guaranteed and secured by Amendments V and XIV of the United States Constitution. (See Burks v. United States (1978), 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 and Hudson v. Louisiana (1980) 450 U.S. 40, 101 S.Ct. 970, 67 L.Ed.2d 30.)

By applying Illinois Supreme Court Rule 761, as amended effective July 1, 1984, in the manner in which the Illinois Supreme Court did, served to further disadvantage Petitioner in the manner described hereinabove, by having the actual effect of causing Petitioner to be placed twice in jeopardy for the same facts.

III.

**PETITIONER HAS BEEN DENIED HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW AS GUARANTEED HIM BY AMENDMENTS V AND XIV OF THE UNITED STATES CONSTITUTION**

Petitioner reasserts each and every position stated in sections I and II of this argument, as if the same were set out herein verbatim, and further states that the Illinois Supreme Court's opinion in the instant cause denies Petitioner, and all other Illinois lawyers, equal protection of the law. That is to say that, if Illinois disciplinary proceedings are neither criminal nor penal in nature, as was decided by the Illinois Supreme Court in this matter, then Illinois lawyers who are involved in disciplinary proceedings, including Petitioner herein, have been reduced to a level of second class citi-

zens who are not protected by the United States Constitution as other lawyers are who practice law in states outside of Illinois, and who appear before their respective disciplinary commissions or boards. (See In re Ruffalo, supra., and Spevack v. Klein, supra.)

Further, Petitioner has been denied due process and equal protection of law, in that he is squarely being treated in a distinct and different manner than all other Illinois lawyers who had the misfortune of having been convicted of a criminal offense in 1980.

IV.

**PETITIONER HAS BEEN DENIED HIS RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS AND EQUAL PROTECTION OF LAW AS GUARANTEED TO PETITIONER BY AMENDMENTS VI AND XIV OF THE UNITED STATES CONSTITUTION**

Prior to the filing of the Administrator's complaint which commenced the

instant cause of action, the Administrator of the ARDC conducted an investigation into Petitioner's representation of several clients. During the course of these investigations, the Administrator served Petitioner with several subpoenas duces tecum, commanding that Petitioner produce entire files which he maintained with regards to said clients. The documents which Petitioner was commanded to produce and tender to the Administrator included the entire files which Petitioner maintained in reference to his representation of Wanda Ferguson and Wynrick Jones.

On March 21, 1988, Petitioner did appear in the office of the Administrator of the ARDC, before its counsel, Mr. John Cesario, and did produce and tender to said counsel for the Administrator the entire files which Petitioner had compiled

and maintained regarding Wanda Ferguson. On a date prior to March 21, 1988, Petitioner also produced and tendered to Mr. Cesario the entire file maintained by Petitioner regarding Wynrick Jones.

As is indicated hereinabove, on June 15, 1988, the Administrator filed a seventeen (17) count complaint against Petitioner which commenced the instant cause of action. Counts X and XI of this complaint essentially charged Petitioner with neglecting his duties as the attorney for Wanda Ferguson, and Count XV of said complaint essentially charged Petitioner with neglecting his duties as the attorney for Wynrick Jones.

Once said files relating to Wanda Ferguson and Wynrick Jones were in the possession of the counsel for the Administrator, said counsel refused to return said files to Petitioner, until three

(3) days after the Hearing Board of the ARDC had taken the testimony of both Wanda Ferguson (who was the only witness who testified to matters which related to counts X and XI of said complaint) and Louise Jones, the mother of Wynrick Jones (who was the only witness who testified to matters which related to count XV of said complaint).

On several occasions after the filing of the Administrator's complaint in the instant cause, but prior to the hearing had before the Hearing Board of the ARDC, Petitioner requested the return of his files which the Administrator had in his possession. In response to Petitioner's requests, Petitioner was incorrectly told by Mr. Cesario, that the files which Petitioner sought were not in the Administrator's possession.

Petitioner, as a result of these acts

committed by the Administrator of the ARDC and his counsel, was rendered totally incapable of preparing to meet and defend against the charges contained in the Administrator's complaint. Petitioner asserts that these acts of the Administrator of the ARDC and his counsel, effectively denied Petitioner his rights to a fair trial and/or hearing, and to due process and equal protection of law, as guaranteed Petitioner by Amendments VI and XIV of the United States Constitution. The Administrator's acts of forcing Petitioner, by the use of compulsory process, to tender entire files to him prior to the filing of a complaint, then filing a complaint against Petitioner based partially upon the information and documents contained in those files, and then refusing to return said files until after the testimony of the witnesses who testified

about matters relating to said files, amounts to an assault upon the entire concept of due process, which, if successful, renders it to be nothing more than hollow, meaningless words of no substance.

V.

**PETITIONER HAS BEEN DENIED HIS RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS AND EQUAL PROTECTION OF LAW AS GUARANTEED TO PETITIONER BY AMENDMENTS VI AND XIV OF THE UNITED STATES CONSTITUTION**

The hearing had in the instant cause before the Hearing Board of the ARDC commenced on April 25, 1989. Illinois Supreme Court Rules 272 and 274, in their entirety, reads as follows:

> "RULE 272-Continuances. No hearing shall be continued except upon written motion supported by affidavit. No hearing shall be continued more than once except under extraordinary circumstances. Engagement of counsel shall not be deemed an extraordinary circumstances." (Ch. 110A Ill. Rev. Stat., sec. 272.)

and

> "RULE 274-Hearings to be Continuous. Hearings shall continue from day to day until the taking of evidence has been completed. Hearings may be held on Saturday." (Ch. 110A Ill. Rev. Stat., sec. 274.)

Nevertheless, at the close of the testimony of April 25, 1989, the Hearing Board granted the oral motion of the Administrator's to continue this cause until May 17, 1989. The Administrator's motion for this continuance was not only oral, but was also not supported by an affidavit or any other supporting document.

On May 17, 1989, Petitioner suffered a dental emergency and was unable to appear at the hearing had in this cause. Petitioner caused these facts to be brought to the attention of the Hearing Board of the ARDC, as well as a motion and/or request to continue said hearing until such time as Petitioner could be

present. Petitioners request and/or motion was read into the record of proceedings by the chairman of the Hearing Board panel and the same was promptly denied. Immediately thereafter, the Hearing Board of the ARDC proceeded with the hearing, receiving testimony from one witness, receiving exhibits into evidence, and concluded all other matters of this hearing, all without Petitioner being present.

At all times during the course of the proceedings before the Hearing Board of the ARDC, said board was well aware of the fact that Petitioner had appeared pro se, and would have appeared pro se on May 17, 1989.

The Hearing Board's act of ignoring Illinois Supreme Court Rules 272 and 274, all to the convenience and benefit of the Administrator, but strictly enforcing said

rules, in spite of Petitioner's extraordinary circumstance, resulted in Petitioner being denied his rights to confront each witness who was called to give testimony against him, due process of law and equal protection of law, all guaranteed Petitioner by Amendments VI and XIV of the United States Constitution.

VI.

**PETITIONER HAS BEEN DENIED HIS RIGHT TO BE FREE OF SELF INCRIMINATION AND HIS RIGHT TO DUE PROCESS OF LAW AS GUARANTEED TO PETITIONER BY AMENDMENTS V AND XIV OF THE UNITED STATES CONSTITUTION**

As is indicated hereinabove, prior to the filing of the Administrator's Complaint in this cause, the Administrator conducted investigations into the manner in which Petitioner had performed his duties in representing various clients. As part of these investigations, Petitioner was forced to prepare and file with

the Administrator letters which answered charges made by clients whom Petitioner had represented. Also, Petitioner was forced to appear before the Administrator and/or his counsel and give testimony and produce and tender files to the Administrator, all pursuant to subpoenas duces tecum which were served upon Petitioner by the Administrator.

As a result of these tactics of the Administrator, Petitioner was placed in the position of giving testimony and producing his private papers and/or files which eventually were used as incriminating evidence against Petitioner. This can be clearly seen by the fact that Counts VIII, XI and XIV of the Administrator's Complaint charged Petitioner with giving false responses to the charges or complaints made by the several clients who complained to the Adminis-

trator regarding Petitioner's representation of said clients. (See the Report and Recommendation of the Hearing Board of the ARDC, at App.-60-61, App.-66-67 and App.-72-73, respectively.) And while Petitioner was acquitted of the charges contained in Counts XI and XIV of the Administrator's Complaint, he was found guilty by the Hearing Board of the charges contained in Count VIII of the Administrator's Complaint. (See the Report and Recommendation of the Hearing Board of the ARDC, at App.-106.)

Further, on September 21, 1988, Petitioner filed his answer to the Administrator's Complaint. This answer specifically neither admitted nor denied each allegation contained in the Administrator's Complaint, and demanding strict proof of said allegations. This answer was stricken by the Hearing Board of the ARDC as not being

in compliance with Illinois Supreme Court Rule 233, which reads, in its entirety, as follows:

> "RULE 233-Answer to be Specific. The answer shall specifically admit or deny each allegation of the complaint. Every allegation not specifically denied is deemed admitted unless the answer states the reason the respondent is unable to make a specific denial." (Ch. 110A Ill. Rev. Stat., sec. 233.)

(See the Report and Recommendation of the Hearing Board of the ARDC, at App.-115.)

Thus, Petitioner herein, was forced to file an amended answer to the charges contained in the Administrator's Complaint, and specifically admit or deny each allegation contained therein, or state a reason as to his inability to deny the same.

To force Petitioner to write responses to complaints made by clients, to surrender files and other papers to the Administrator, to testify at depositions

pursuant to subpoenas duces tecum, and to specifically admit or deny charges contained in the Administrator's Complaint, all were violations of Petitioner's right to be free from self incrimination and his right to due process, both guaranteed to Petitioner by Amendments V and XIV of the United States Constitution. (In re Ruffalo (1968), 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117; Spevack v. Klein (1967), 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574; Application of Gault (1967), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527.

VII.

**PETITIONER HAS BEEN DENIED HIS RIGHT TO DUE PROCESS AS GUARANTEE TO PETITIONER BY AMENDMENTS V AND XIV OF THE UNITED STATES CONSTITUTION**

**Finally, Petitioner asserts that the Hearing Board denied Petitioner his right to due process of law by applying an**

improper standard and/or burden of proof to the evidence introduced by the Administrator. The burden of proof imposed upon the Administrator in this cause was that of "clear and convincing evidence". (See the Report and Recommendation of the Hearing Board of the ARDC, at App.-101-117.) However, if disciplinary matters "are adversary proceedings of a quasi-criminal nature" (In re Ruffalo, supra., at 88 S.Ct. 1226), Petitioner asserts that the burden of proof which should have been imposed upon the Administrator in proving his case, is proof beyond a reasonable doubt.

Obviously, to impose penalty and/or punishment upon Petitioner herein, in this cause, which is of a quasi-criminal nature, based upon proof which is less than proof beyond a reasonable doubt, clearly violates Petitioner's right to due

process of law as guaranteed Petitioner by Amendments V and XIV of the United States Constitution.

## CONCLUSION

For all of the reasons set out hereinabove, and for all other reasons that clearly appear in the record herein, Petitioner prays that a Writ of Certiorari be issued to review the order and Judgment of the Illinois Supreme Court.

Respectfully submitted,

JAMES B. BELL, Pro Se
11031 So. Sangamon St.
Chicago, IL. 60643
(312) 995-5101

# APPENDIX

Docket No. 71175-Agenda 8-November 1991
In re **JAMES BERNARD BELL**, Attorney, Respondent.

**JUSTICE BILANDIC** delivered the opinion of the court:

On June 15, 1988, the Administrator of the Attorney Registration and Disciplinary Commission (hereinafter ARDC) instituted a disciplinary action against respondent, James Bernard Bell, by filing a 17-count complaint before the ARDC Hearing Board (hereinafter Hearing Board). The complaint alleged that respondent, in violation of numerous provisions of the Illinois Code of Professional Responsibility (hereinafter Code), had: (a) been convicted in Federal court of making false statements to influence a bank; (b) filed a false affidavit before the Supreme Court of Tennessee; (c) neglected the cases of seven clients and (d) given false letters

and sworn statements to the ARDC in response to its inquiries.

On November 22, 1988, the Administrator filed a request to admit facts and genuineness of documents, to which respondent failed to respond. (107 Ill. 2d R. 216.) The Hearing Board granted the Administrator's motion September 15, 1989, thereby establishing the facts set forth in the Administrator's complaint as true and the Administrator's documentary evidence as genuine. After conducting a hearing on the Administrator's complaint against respondent, the Hearing Board issued its report and recommendation on September 15, 1989. It found that the Administrator had sustained his burden of proving the allegations of counts I through X, XII, XIII and XV by clear and convincing evidence. The Hearing Board recommended that respondent be disbarred.

107 Ill. 2d R. 753(c)(3).

On November 15, 1989, respondent filed exceptions to the Hearing Board's report and recommendation with the ARDC Review Board. (107 Ill. 2d R. 753(e)(1). Respondent failed to comply with the Review Board's briefing schedule, which resulted in the Review Board's rendering its determination without the benefit of respondent's brief. On June 8, 1990, the Review Board adopted the Hearing Board's findings of fact and conclusion of law, recommending that respondent be disbarred. 107 Ill. 2d R. 753(e)(4).

On June 28, 1990, respondent moved this court to allow his exceptions to the Hearing Board's report to stand as his exceptions to the Review Board's report. (107 Ill. 2d R.753(e)(5). We allowed respondent's motion. Respondent also failed to comply with our briefing

schedule, requesting three successive extensions in which to file his brief. On July 15, 1991, this court ultimately accepted respondents brief instanter.

Respondent presents the following issues for review by this court: (1) whether this court's discharge of the Rule 761 proceedings against respondent precludes the Administrator from filing a complaint based on respondent's misconduct which led to his indictment and convictions; (2) whether the Administrator has jurisdiction to file a complaint based on the same misconduct; (3) whether application of the Code to misconduct engaged in prior to the Code's effective date violates the constitutional prohibition against ex post facto laws; (4) whether the Hearing and Review Boards erred in finding that the Administrator had proven 13 counts of the complaint by clear and

convincing evidence; (5) whether the Hearing Board erred in denying respondent's motion for a continuance; and (6) whether the recommended sanction is appropriate.

While not dispositive of the merits of this action, we feel compelled to note that respondent neglected and engaged in dilatory tactics throughout his own disciplinary proceedings. Most telling is the fact that respondent failed to appear on the second day of the hearing before the Hearing Board. As a result, respondent offered no evidence or testimony to controvert the allegations of the Administrator's complaint. We note that the Hearing Board also allowed the Administrator's motion to admit the facts set forth in his complaint and the genuineness of his documentary evidence. Thus, the Administrator's case against respon-

dent stands completely unrebutted. We turn now to a detailed review of the Administrator's case.

I

A. Bank Applications/
Federal Convictions

On December 11, 1979, respondent was charged by indictment, in the United States District Court for the Middle District of Tennessee, with five counts of knowingly making false statements to influence a bank. (18 U.S.C., sec. 1014 (1988).) Each count of the indictment related to separate conduct involving five different banks. On March 27, 1980, respondent pled guilty to counts I and IV of the indictment and counts II, III and V were dismissed pursuant to respondent's plea agreement.

Count I of the Administrator's complaint is based on the conduct alleged in

the two counts of the indictment to which respondent pled guilty. Counts II through IV of the Administrator's complaint are based on the remaining three counts of the indictment, which were dismissed.

The Administrator presented certified copies of the following documentary evidence to the Hearing Board to support counts I through V of his complaint against respondent: respondent's Federal indictment, respondent's "Petition to Enter Plea of Guilty," the Judgment and Probation/Commitment Order," and an "Exhibit in Furtherance of Rule 11(f), Federal rule of Criminal Procedure" prepared by the United States Attorney for the Middle District of Tennessee. This Rule 11(f) exhibit was prepared during the investigation which led to respondent's indictment, and attached to it are photostatic copies of the personal financial

statements that respondent furnished to the banking institutions delineated in the indictment.

On January 26, 1987, the ARDC initiated Supreme Court Rule 761 proceedings (107 Ill. 2d R. 761) against respondent based on his Federal conviction. (In re Bell, No. M.R. 4217.) Pursuant to Rule 761, if an attorney is convicted of a crime involving moral turpitude, the Administrator must petition this court to suspend the attorney from the practice of law until further order. (107 Ill. 2d R. 761 (b).) Whether to temporarily suspend the attorney pursuant to Rule 761 is a matter of discretion. (107 Ill. 2d R. 761(b).) On February 12, 1987, this court issued a rule to show cause why respondent should not be suspended from the practice of law until further order pursuant to Rule 761. (107 Ill. 2d R.761.) Respondent answered

and this court discharged the rule to show cause on July 15, 1987.

B. False Affidavit

Respondent was admitted to practice law in Illinois on August 13, 1979. Due to respondent's Federal convictions, on June 16, 1980, the Supreme Court of Tennessee suspended him from practicing law in Tennessee for a period of five years. Pursuant to this order, the Supreme Court of Tennessee required respondent to file and affidavit listing all jurisdictions where he was admitted to practice law. Respondent's May 14, 1980 affidavit failed to disclose that respondent was admitted to practice law in Illinois. Respondent failed to disclose the falsity of his affidavit to the Supreme Court of Tennessee and likewise failed to disclose his conviction to this court as required by

Supreme Court Rule 761(a) (107 Ill. 2d R. 761(a)). It was not until November 13, 1986, that the Administrator discovered respondent's Federal convictions.

Lance Bracy, the chief disciplinary counsel for the Board of Professional Responsibility of the Supreme Court of Tennessee since 1979, testified before the Hearing Board. Bracy testified that under section 18 of the rules of the Supreme Court of Tennessee, an attorney who is suspended or disbarred is required to file an affidavit with the Board stating that he has, inter alia, notified the Board of all jurisdiction in which he has been admitted to practice law. Bracy further testified that he learned of respondent's admission to the bar in Illinois in 1986, a fact which respondent never relayed to the Tennessee Board of Professional Responsibility.

Count V of the Administrator's complaint is based on these facts.

Based upon the Federal charges regarding the false bank applications and respondent's false affidavit to the Supreme Court of Tennessee, counts I through V of the Administrator's complaint charged respondent with violating: (1) Rule 1-102(a)(3) (illegal conduct involving moral turpitude) (107 Ill. 2d R. 1-102(a)(3); Rule 1-102(a)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) (107 Ill. 2d R. 1-102(a)(4); Canon 9 (conduct which has the appearance of professional impropriety) (107 Ill. 2d Canon 9) and Supreme Court Rule 771 (conduct which tends to defeat the administration of justice or brings the legal profession into disrepute) (107 Ill. 2d R. 771).

C. Neglect

The Administrator's complaint also alleged that respondent neglected the cases of seven clients. Respondent's professional neglect involves both criminal and civil matters.

1. Criminal Cases

In August 1985, respondent agreed to represent David Turner in an appeal of Turner's rape and theft conviction by the circuit court of Cook County. Turner paid respondent a $2,000 fee. Respondent, however, failed to file a brief on Turner's behalf and, on December 20, 1985, the appellate court dismissed Turners appeal for want of prosecution. On January 21, 1986, respondent successfully motioned the appellate court to vacate its dismissal order and to grant respondent an extension of time to file Turner's brief.

Respondent, however, never filed a brief, resulting in Turner's appeal being dismissed a second time for want of prosecution. Respondent never informed his client of this dismissal. In response to Turner's inquiry as to the status of his appeal, the appellate court sent Turner a letter in February 1987 informing him that his appeal had been dismissed on June 12, 1986.

These facts form the basis of count IV of the Administrator's complaint. The Administrator submitted documentary evidence to the Hearing Board to support these facts.

Milton White was charged by indictment in the circuit court of Cook County with the offense of murder. On January 6, 1986, respondent entered his appearance as White's counsel. After respondent failed to appear on White's behalf

on six consecutive occasions, the court appointed the public defender as co-counsel on May 1, 1986. Respondent failed to appear a seventh time. Therefore, the court appointed the public defender as counsel for White on June 13, 1986.

These facts form the basis of count XII of the Administrator's complaint. The Administrator submitted documentary evidence to the Hearing Board to support these facts.

Louise Jones testified before the Hearing Board that, on March 2, 1984, she consulted with respondent regarding appellate representation for her son, Wynrick Jones. Jones had been convicted of murder in California. Mrs. Jones testified that she initially paid respondent $300 to review her son's trial transcript. Respondent scheduled a conference, told Mrs. Jones it was a good case but that

he would have to research California law, and requested a $4,000 retainer. Respondent never informed Mrs.Jones that he was not licensed to practice law in California. On March 29, 1984, Mrs. Jones paid respondent $2,000 with the mutual understanding that respondent would not perform any work on the case unless she could provide the remaining $2,000. Unable to raise the remaining balance of the required retainer, Mrs. Jones requested that respondent refund her $2,000. Respondent never refunded Mrs. Jones' money.

These facts form the basis of count XV of the Administrator's complaint.

2. Civil Cases

On March 2, 1979, respondent filed a products liability complaint in the United States District Court for the Northern

District of Illinois on behalf of Clarence and Nancy Dixson, alleging that, on March 3, 1977, three of the couple's children had consumed cereal distributed by General Mills, Inc., which contained crushed glass. Both Clarence and Nancy Dixson testified before the Hearing Board that they initially retained another attorney, but were persuaded to transfer the case to respondent, who is Nancy Dixson's nephew. The Dixsons had contact with respondent regarding their case shortly after the March 2, 1977, incident. Thereafter, at least a year passed between contacts with respondent; Mrs. Dixson testified that she telephoned and wrote respondent, but could never get any adequate responses from him concerning the case and its status.

The documentary evidence submitted by the Administrator reveals that, after ini-

tiating the action on March 2, 1979, respondent failed to appear at the December 28, 1979, status hearing scheduled by the Federal court. Moreover, respondent failed to produce a sample of the cereal, to answer the interrogatories, and to produce his clients for properly noticed depositions. Based on respondent's conduct, the Federal court dismissed the Dixsons' complaint with prejudice on February 19, 1980. (Fed. R. Civ. P. 35, 37(c).) Respondent never took any steps to reinstate the Dixsons' cause of action and it is now time-barred.

These facts form the basis of count VII of the Administrator's complaint.

On August 12, 1983, Madronica Biddings interviewed with American Airlines, Inc. for employment. During the interview, the agent interviewing her wrote on her application that she was a

"bitch." Biddings argued with the agent and obtained possession of the application. Thereafter, Biddings consulted with respondent, who agreed to represent her in a cause of action against American Airlines. Biddings paid respondent a retainer of $250. Biddings testified before the Hearing Board and acknowledged that respondent, at the time he agreed to represent her, informed her that there were numerous problems with her case. Nevertheless, respondent filed an action on her behalf in the circuit court of Cook County on August 10, 1984. Biddings testified that she called respondent about once a month to inquire about her case and that she had contacted him about 10 times.

The documentary evidence submitted by the Administrator shows that, on May 1, 1985, the defendant filed a motion to dismiss Biddings' complaint for failure to

state a cause of action. On June 27, 1985, the court struck plaintiff's complaint in its entirety, giving respondent leave to file an amended complaint within 28 days.

On July 25, 1985, respondent moved the court for an extension in which to file the amended complaint, but failed to provide opposing counsel with notice of the motion. Respondent failed to appear at the next scheduled progress call and Biddings' case was dismissed for want of prosecution. Respondent motioned the court to vacate the dismissal order which was set for hearing on September 26, 1985. However, respondent failed to appear at the scheduled hearing and his motion to vacate was denied on September 2, 1985. Respondent took no further action to reinstate Biddings' cause of action, which is now time-barred.

Biddings testified that the last time she spoke with respondent was in September 1985. At that time, respondent told her that the case was going to court and she might have to testify. Thereafter, Biddings called the clerk of the circuit court herself and discovered that her case had been dismissed for want of prosecution. Biddings further testified that, up to the date of the hearing, respondent had not informed her that her case had been dismissed.

These facts form the basis of count IX of the Administrator's complaint.

On November 14, 1984, respondent petitioned the clerk of the circuit court for the dissolution of Wanda Ferguson's marriage. Ms. Ferguson testified at the hearing that she paid respondent a $450 retainer fee to obtain his services. Ms. Ferguson paid respondent an additional

$125 shortly after he filed her dissolution petition.

The Administrator's documentary evidence established that, on May 8, 1985, respondent successfully moved the court for temporary custody and child support on behalf of Ms. Ferguson. However, respondent failed to appear at a trial call on May 9, 1985, and the court dismissed Ms. Ferguson's petition for want of prosecution. Respondent never told Ms. Ferguson that her petition had been dismissed, nor did he ever file a motion to vacate the dismissal order.

Ms. Ferguson testified that, after respondent argued her motion for temporary custody and child support, she made numerous attempts to contact respondent. Either Ms. Ferguson could not reach him or he told her that he would get back to her. She finally reached respondent on July 14,

1986, when he told her that, for an additional $250, he could complete the dissolution within a month. Ms. Ferguson testified that she and her ex-husband paid respondent $125 each in August 1986. Ultimately, Ms. Ferguson had to obtain the services of another lawyer and incurred an additional $689 in attorney fees.

These facts form the basis of count X of the Administrator's complaint.

Finally, Herbert Turner testified before the Hearing Board that he retained respondent in September 1985 to represent H & W Towing concerning a potential purchase of property which it was leasing. Turner paid respondent a $400 retainer fee. Turner provided respondent with the lease, the building appraisal and other documents related to the property in October 1985.

As of December 2, 1985, respondent

had taken no action regarding the purchase and had not communicated to Turner in this regard. Therefore, Turner terminated the attorney-client relationship.

Turner testified that, because of respondent's inaction, he was unable to purchase the property. Turner requested respondent to return his check for $400, which respondent failed to do. Turner stated that he had difficulty contacting respondent and could not get any information from him. During cross-examination, Turner testified that the purchase of the property was a pressing matter because the fire department and the city building inspectors had made complaints on the property and he did not want to spend any more money on the building without owning it.

These facts form the basis of count XIII of the Administrator's complaint.

Based on the facts set forth above, counts VI, VII, IX, X, XII, XIII AND XV of the Administrator's complaint charged respondent with violating: (a) Rule 1-102 (a)(5) (conduct prejudicial to the administration of justice) (107 Ill. 2d R. 1-102(a)(5); (b) Rule 6-101(a)(3) (neglect of a legal matter entrusted to him) (107 Ill. 2d R. 6-101(a)(3); (c) Rule 7-101 (a)(1) (failure to seek the lawful objectives of his client through reasonably available means) (107 Ill. 2d R. 7-101 (a)(1); (d) Rule 7-101(a)(2) (failure to carry out a contract of employment entered into with a client for professional services) (107 Ill. 2d R. 7-101(a)(2); (e) Rule 7-101(a)(3) (conduct which prejudiced or damaged a client during the course of the professional relationship) (107 Ill. 2d R. 7-101(a)(3); (f) Canon 9 (conduct which has the appearance of

professional impropriety) (107 Ill. 2d Canon 9); and (g) Supreme Court Rule 771 (conduct which tends to defeat the administration of justice or brings the courts or legal professions into disrepute) (107 Ill. 2d R. 771).

D. False Testimony Before the ARDC

In August 1986, respondent submitted a written response to the Dixsons' charge before the Administrator. In this response, respondent stated that, in October 1979, Nancy Dixson admitted to him that she had placed the crushed glass in the cereal and fabricated the law-suit. Respondent repeated this allegation during his sworn statement before the Administrator on November 12, 1986. Respondent stated that he advised Mrs. Dixson that he would not further assist her in this illegal conduct.

At the hearing before the hearing Panel, Nancy Dixson testified that she had not fabricated this incident nor had she ever had a conversation with respondent in which she admitted fabricating the occurrence.

These facts form the basis of count VIII of the Administrator's complaint.

Based on the facts set forth above, count VIII of the Administrator's complaint charged respondent with violating: (a) Rule 1-102(a)(3) (conduct involving moral turpitude) (107 Ill. 2d R. 1-102 (a)(3)); (b) Rule 1-102(a)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation) (107 Ill. 2d R. 1-102(a)(4)); Canon 9 (conduct which has the appearance of professional impropriety) (107 Ill. 2d Canon 9); and (d) Supreme Court Rule 771 (conduct which tends to defeat the administration of

justice or brings the courts or legal profession into disrepute) (107 Ill. 2d R 771).

OPINION

Before this court, respondent initially argues that the Administrator is precluded from filing a complaint based on the misconduct which led to his Federal indictment and conviction. Respondent bases his contention upon the fact that this court, in its resolution of the Administrator's Rule 761 proceedings against respondent, did not suspend him on an interim basis at that time. Supreme Court Rule 761, effective July 1, 1984, provides:

"Conviction of a Crime

(a) Notification. It is the duty of an attorney admitted in this State who is convicted in any court of a felony or misdemeanor to notify the Administrator of the con-

viction in writing within 30 says of the entry of the judgment of conviction.***

(b) Conviction of a Crime Involving Moral Turpitude. If an attorney is convicted of a crime involving fraud or moral turpitude, the Administrator shall file a petition with the court alleging the fact of such conviction and praying that the attorney be suspended from the practice of law until further order of the court. *** [T]he court shall issue a rule to show cause why the attorney should not be suspended from the practice of law until further order of court. After consideration of the petition and the answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until further order of the court.

***

(d) Hearing. Where an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof.

(1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the

Hearing Board alleging the fact of the conviction." (Emphasis added.) 107 Ill. 2d R. 761.

Respondent's convictions for knowingly providing false information to influence a bank constitute the commission of crime involving moral turpitude. From the language of the rule, it is clear that the Administrator was required to file a complaint before the Hearing Board, regardless of whether this court temporarily suspended respondent. The purpose of this rule, when viewed in its entirety, is to allow this court to decide whether the attorney should be temporarily suspended pending ARDC investigation and hearing to determine whether the crime ultimately warrants discipline. This court's decision to allow an attorney to continue to practice law pending proceedings does not preclude the ini-

tiation of disciplinary proceedings based on the same misconduct. Nor does it preclude the ultimate imposition of discipline. See In re Lunardi (1989), 127 Ill.2d 413, 416, 423.

Respondent also argues that the Administrator lacked jurisdiction to file a complaint based on his Federal convictions. Respondent argues that the Administrator's action should be governed by the version of Rule 761 which was in effect on the dates of his misconduct (1976-77) and convictions (March 1980), rather than Rule 761 as amended, effective in July 1984. The earlier version of Rule 761 provided, in part:

> "In any case in which the court has entered an order suspended an attorney until further order of court by reason of his conviction of a crime,*** a further hearing shall be conducted to determine whether the crime warrants discipline, and, if so, the extent thereof." (58 Ill.2d

R.761.)

Respondent asserts that, according to this version of Rule 761, the Administrator was not authorized to institute a complaint based on misconduct which resulted in a conviction unless this court first suspended the attorney until further order. Respondent argues that, since this court did not suspend him in the Rule 761 proceedings, the Administrator could not base his complaint on respondent's misconduct which resulted in his Federal convictions.

Rule 761 is a procedural rule governing ARDC procedures for initiating certain disciplinary proceedings. Being procedural in nature, the version of Rule 761 which was in effect at the time the Administrator filed his complaint, (1988) is the governing rule. (See Niven v. Siqueira (1985), 109 Ill.2d 357, 364.)

Thus, we reject respondent's argument and find that, pursuant to Rule 761, effective July 1, 1984, the Administrator had jurisdiction to file a complaint based on respondent's misconduct which resulted in his Federal indictment and convictions. (107 Ill. 2d R. 761(d).) Furthermore, as this court said in In re Mitan (1979), 75 Ill.2d 118, 124:

> [B]ecause of the nature of the proceedings before those to whom we have delegated the authority to act, we will not consider technical objections as to the practice and procedure before them, nor can such technical objections bind us or limit our authority to act. [Citation.]"

In a related argument, respondent contends that he was denied due process because the Hearing and Review Boards found that the misconduct which led to his Federal indictment and convictions violated rules of the Code. Respondent argues that this misconduct occurred prior

to the Code's July 1, 1980, effective date. (See 79 Ill. 2d R. 1-101 et seq.) Therefore, respondent argues, application of the Code to this misconduct has an ex post facto effect which violates constitutional prohibitions against ex post facto laws. U.S. Const., art. I, sec. 10; Ill. Const. 1970, art. I, sec 16.

We rejected this argument in In re Samuels (1980), 126 Ill.2d 509. The prohibition against ex post facto laws guards against any law " ' "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." ' [Citations.]" (Samuels, 126 Ill.2d at 523.) Ex post facto clauses apply only to laws which are criminal or penal in nature. (Samuels, 126 Ill.2d at 523-24.) Illinois

disciplinary proceedings are neither criminal nor penal in nature. (Samuels, 126 Ill.2d at 524.) As this court has stated:

> " 'The first purpose of a preceeding to discipline a member of the bar is to protect members of the public, to maintain the integrity of the legal profession and to safeguard the administration of justice from reproach.' [Citations.] 'Punishment is not the object. The object of such an inquiry is to determine whether the attorney is a proper person to be permitted to practice his profession.' " (In re March (1978), 71 Ill.2d 382, 295.)

Therefore, ex post facto clauses do not apply to disciplinary proceeding. Samuels, 126 Ill.2d at 524.

Furthermore, we note that, at the time respondent engaged in this misconduct, his acts violated the Illinois State Bar Association's (hereinafter ISBA) Code of Professional Responsibility. (Illinois Code of Professional Responsibility, DR 1-102(A)(3) (attorney shall not

not engage in illegal conduct involving moral turpitude; DR 1-102(A)(4) (attorney shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) (rev. 1977.) This court has held that, prior to the adoption of the Code, the ISBA's code provided a safe guide for professional conduct and an attorney could be disciplined for violating it. (In re Taylor (1977), 66 Ill.2d 567, 571.) Therefore, the Code is not a law " ' "which imposes a punishment for an act which was not punishable at the time it was committed" ' " (Samuels, 126 Ill.2d at 523, quoting Weaver v. Graham (1981), 450 U.S. 24, 28, 67 L.Ed.2d 17, 22, 101 S.Ct. 960, 964), and respondent's argument is without merit.

Next respondent argues that the Administrator failed to prove each count of the complaint by clear and convincing

evidence. As noted above, the Administrator's case stands uncontradicted. Respondent cannot now, at this late date, present his case by way of argument to this court. To now consider respondents factual assertions in his brief would elevate these assertions to the level of actual evidence admitted before the Hearing Board. Moreover, our consideration of respondent's assertions would be:

> "tantamount to condoning unprofessional, indifferent and dilatory behavior by one charged with professional misconduct. It would *** tend to discourage attorneys from cooperating in disciplinary proceedings and could significantly increase the problems of the Attorney Registration and Disciplinary Commission. We never have and will not now encourage indifference to, or inaction regarding charges of, professional misconduct. [Citations.]" In re Weston (1982), 92 Ill.2d 431, 437.

The Hearing Board found that the

Administrator had proven by clear and convincing evidence the allegations contained in counts I through X, XII, XIII and XV. The Hearing Board also found that the Administrator had failed to sustain his burden of proof with respect to counts XI, XIV, XVI and XVII. The Hearing Board is in the best position to evaluate the credibility of witnesses. (In re Yamaguchi (1987), 118 Ill.2d 417, 424.) Its findings of fact are entitled to great weigt. (In re Joyce (1989), 133 Ill.2d 16, 29-30.) We will not disturb its findings of fact unless they are against the manifest weight of the evidence. (In re Lunardi (1989), 127 Ill.2d 413, 430.) The Review Board adopted both the findings of fact and conclusions of law of the Hearing Board. Upon careful review of the evidence proffered by the Administrator in this case, we find no reason to disturb

the findings of the Hearing and Review Boards. Therefore, we hold that the Administrator has proven counts I through X, XII, XIII and XV by clear and convincing evidence.

Respondent also argues that the Hearing Board erred in denying his request for a continuance on May 17, 1989, the second day of the hearing in this matter. As noted above, respondent failed to appear before the Hearing Board on that day. At the beginning of the hearing, an attorney, Steve Brussard, telephoned the Administrator on respondent's behalf and informed him that respondent would not be able to appear due to a dental problem. Brussard told the Administrator that respondent had requested him to appear and obtain a continuance. In a separate telephone conversation, Brussard related this information to the chairman of the

Hearing Panel. Brussard did not know the name of the dentist who would be treating respondent.

Rule 272 of the ARDC governs continuances in disciplinary proceedings (Dis. Comm'n R. 272 (1987)). Rule 272 provides, in part:

> "No hearing or prehearing conference shall be continued except upon written motion supported by affidavit."

In this case, respondent failed to submit a written motion and affidavit. Respondent did not personally contact the Administrator or the Hearing Board panel to explain his dental problem. Respondent did not provide any documentation of his dental emergency nor did respondent provide the Hearing Board with the name of his treating dentist so that it could verify respondents dental problem. Under these circumstances, the Hearing Board

properly denied respondent's "request" for a continuance.

Finally, respondent contends that the recommended sanction of disbarment is unduly harsh. In a disciplinary matter, the final determination of the appropriateness of the sanction lies solely with this court. (In re Levin (1987), 118 Ill.2d 77, 87.) Although we strive for consistency in the imposition of sanctions, the sanction imposed in each case depends on the unique facts of the case. (In re Trezise (1987), 118 Ill2d 346, 357.) In determining the appropriate discipline to be imposed, we consider the nature of the violations and the circumstances surrounding the misconduct. (Samuels, 126 Ill.2d at 529.) We must view respondent's actions in relation "to the underlying purposes of our disciplinary process, which pur-

poses are to maintain the integrity of the legal profession, to protect the administration of justice from reproach, and to safeguard the public." In re LaPinska (1978), 72 Ill.2d 461, 473.

In this case, respondent was convicted of crimes involving moral turpitude in that he knowingly filed false loan application with banks. Conviction of a crime involving moral turpitude is conclusive evidence of respondent's guilt and that discipline is warranted. (In re Ciardelli (1987), 118 Ill.2d 233, 239.) Respondent will be disciplined on the basis of his misconduct which led to his convictions. Therefore, respondent's actual misconduct is relevant to the determination of the appropriate sanction to be imposed. (Ciardelli, 118 Ill.2d at 239.) In this case, respondent was indicted for filing five dif-

ferent false loan applications with banks. Respondent filed these false applications on five different occasions with five different banks. These instances of misconduct spanned a period of more than one year. Even though responded pled guilt to only two instances of misconduct, all five instances are relevant to our determination of what sanctions should be imposed.

Respondent also filed a false affidavit before the Supreme Court of Tennessee, failing to inform that court that he was licensed to practice law in Illinois. At the time respondent filed this false affidavit, our Rule 763 was in effect. (107 Ill. 2d R. 763.) Rule 763 provides, in part:

> "If an attorney licensed to practice law in this State and another State is disciplined in the foreign State, he may be subjected to the same discipline in

this State***." (107 Ill.2d R. 763.)

By failing to inform the Tennessee Supreme Court of his Illinois license, respondent perpetrated a fraud not only upon the high court of Tennessee, but upon this court as well. Perpetration of a fraud upon this court or any tribunal "is conduct of such a serious nature as to warrant disbarment." In re Mitan (1979), 75 Ill. 2d 118, 127; see In re Yamaguchi (1987), 118 Ill.2d 417, 426-27.

In addition, respondent seriously neglected the cases of seven clients, three of which were criminal cases. We note that "more severe discipline is appropriate to deter neglect in criminal cases than in civil cases." (Levin, 118 Ill.2d at 89.) Furthermore, many of respondent's clients in the civil cases were prejudiced by respondent's neglect.

The Dixsons' and Biddings' causes of action were time-barred due to respondent's inaction. All cases respondent filed were dismissed for want of prosecution. Ms. Ferguson had to hire another attorney to obtain her divorce and incurred nearly $700 in additional attorney fees despite the money that she had already paid respondent. Ms. Jones paid respondent $2,000 as a retainer to represent her son's criminal appeal in California. Clearly respondent knew that she was paying him for professional services that he was unable to provide since he was not licensed to practice law in California. Herbert Turner lost an opportunity to purchase the building he was leasing due to respondent's neglect.

Moreover, all of the client-complainants in this case were repeatedly misled by respondent concerning the sta-

tus of their cases. Respondent avoided and neglected his professional duties towards these clients. Essentially, each client paid respondent for legal services which he failed to provide. This type of neglect and misrepresentation warrants disbarment. In re Behnke (1989), 127 Ill. 2d 322; Levin, 118 Ill.2d 77.

Finally, respondent gave a false written response to the Administrator in regards to the Dixsons' complaint. Respondent repeated this false response in his sworn statement before the Administrator. We have held that "the giving of false testimony demonstrates a further unfitness of an attorney to practice law." In re Stillo (1977), 68 Ill.2d 49, 55.

In light of the several instances and types of respondent's misconduct, we agree with the Hearing and Review Boards' recommendations of disbarment. As noted above,

any single type of misconduct in which respondent has engaged has warranted disbarment in the past. Cumulatively, respondent has demonstrated that we cannot allow him to continue in the practice of law and invite the public to retain his services.

Accordingly, it is ordered that respondent be disbarred.

Respondent disbarred.

Filed Jan 23 1992

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| JAMES B. BELL | ) | Administrator's No. |
| | ) | |
| Attorney-Respondent. | ) | 88 CH 148 |
| | ) | |
| No. 3123906. | ) | |

REPORT AND RECOMMENDATION

Introduction and Chronology of File

The Hearing Board believes that it is important that it set out the chronology of events which led ultimately to the hearing in this matter. The Administrator filed his Complaint in seventeen (17) counts on June 15, 1988. On July 13, 1988, the Respondent filed a Motion for Extension which was granted on August 16, 1988, by order of the panel granting an extension to August 29, 1988. On September 7, 1988, the Administrator

filed a Motion for Sanctions against the Respondent for not having filed any responsive pleadings. On September 21, 1988, the Respondent filed an Answer to the Complaint and on September 21, 1988, the Respondent also filed a Motion to Dismiss Counts I through IV of the Complaint alleging that the operative facts occurred prior to Respondent being licensed to practice in the State of Illinois. On September 27, 1988, the chair of the panel entered an Order denying the motion to dismiss and granting Respondent leave to file his answer instanter. On September 30, 1988, the Administrator filed his second motion for sanctions along with memorandum in support thereof. On November 14, 1988, the chair of the panel entered an order directing that Respondent file a response to the Administrator's second Commission Rule

233 Motion for Judgment on or before November 7, 1988. On November 22, 1988, the Respondent filed a motion for leave to file amended answer which motion was granted by order entered December 1, 1988. On December 16, 1988, the Administrator filed his Rule 253 notice and on December 9, 1988, an Order was entered directing the Respondent to file his report pursuant to Rule 253 on or before January 26, 1989, and to make himself available for deposition on or before February 5, 1989, and further scheduling the matter for hearing on April 6, 1989, beginning at 10:00 a.m. at the office of the Administrator. On February 6, 1989, a motion for sanctions was filed against Respondent for failure to appear at the deposition scheduled on January 20, 1989. An order granting the sanction requested by the Administrator was entered by the

chair of the panel on March 1, 1989. On March 31, 1989, the Respondent filed a Motion to vacate the order of March 1, 1989, which order was vacated by order entered April 5, 1989, and on that same date the Respondent was ordered to appear for a deposition on or before April 17, 1989, and further rescheduled the hearing in this cause for April 25, 1989. The Administrator filed a motion for sanctions on April 18, 1989, alleging that the Respondent failed to appear for a scheduled deposition on April 13, 1989, and requested that the deposition be continued to April 14, 1989, beginning at 10:00 a.m., which the Respondent agreed to. On April 14, 1989, the Respondent again called the Administrator's office and requested that the deposition be continued to 2:00 p.m. that day. Said motion further alleges that Respondent failed to

appear for his deposition on April 14, 1989. The motion of the Administrator for sanctions was not heard prior to the hearing on April 25, 1989, but was heard prior to beginning the testimony in the case.

The hearing was scheduled for 10:00 a.m. April 25, 1989, and began at 10:33 a.m. with Respondent James B. Bell not being present. The attorney-Respondent did arrive for the hearing at approximately 10:40 a.m. and at that time the Administrator's motion for sanctions and the Respondent's motion to set deposition and for time to respond to Administrator's motion for sanctions was heard by the panel and both motions were denied. This matter could not be concluded in one day and pursuant to an order entered April 27, 1989, the matter was continued to May 17, 1989, beginning at 10:00 a.m. Said order

further provided that the discovery deposition of the Respondent was to proceed on May 5, 1989, at 10:00 a.m. at the office of the Administrator. On May 17, 1989, the panel reconvened for the continued hearing. James B. Bell failed to appear. The record will reflect that the panel and the Administrator made attempts to locate Mr. Bell without success. No written motion for continuation was presented and no attorney appeared on behalf of James Bernard Bell, and the balance of the hearing continued in his absence.

Introduction

This matter came on to be heard on April 25, and May 17, 1989, before this panel of the hearing board. Present at the proceedings were: Dennis Nudo, Charles T. Beckman and Joseph C. Polito, hearing panel members: John R. Cesario and Samuel J. Manila for the Administrator, the

Respondent James Bernard Bell was present on April 25, 1989, but not present for the conclusion of the hearing on May 17, 1989.

CHARGES

On June 15, 1989, the Administrator filed his complaint in seventeen (17) counts alleging misconduct by the Respondent in the following respects:

1. Counts I through IV concern the Respondent's knowingly making false statements to influence a bank to procure a loan in violation of United States Code Title 18 Section 1014. Said Counts further allege that Respondent was indicted in the State of Tennessee on December 11, 1979, for the conduct referred to above. And that by virtue of said conduct, the Attorney-Respondent has committed the following acts of misconduct:

a. Conduct involving moral turpitude

in violation of Rule 1-102 (a)(3) of the Illinois Code of Professional Responsibility;

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 102(a)(4) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

2. Count V of the Complaint alleges that on August 13, 1979, Respondent was admitted to practice in Illinois and that he was suspended from the practice of law for five (5) years by the Supreme Court of Tennessee on April 3, 1980. In his affidavit to the Tennessee Supreme Court Respondent was required to list all jurisdictions to which he was admitted to practice law, but failed to list on said affi-

davit that he was admitted to practice in the State of Illinois and has not since that date notified the State of Tennessee that he is admitted to practice in the State of Illinois. The Administrator alleges that the Respondent has committed the following acts of misconduct by virtue thereof:

a. Conduct involving moral turpitude in violation of Rule1-102(a)(3) of the Illinois Code of Profession Responsibility;

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 102 (a)(4) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

3. Count VI alleges that the Attor-

ney-Respondent neglected a legal matter entrusted to him in that he did not prepare a brief or other responsive pleadings in the matter of the People of the State of Illinois vs. Turner, 84 C 6023. The Count further alleges that as a result of Respondent's failure to file a brief the appeal was dismissed for want of prosecution and Respondent failed to inform David Turner or any members of his family that the appeal was dismissed for want of prosecution. The Count alleges that as a result of the alleged acts of misconduct the Respondent is guilty of the following:

a. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objec-

tives of his client through reasonably available means in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101 (a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(3) of the Illinois Code of Professional Responsibility; and

f. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

4. Count VII likewise charges Respondent with neglect of a legal matter in the matter of Phillip Donnell Dixson, Kenneth Oliver Dixson and Glen Edward Dixson, all minor children, by and through their parents and next of friends, Mr. Clarence Dixson and wife, Mrs. Nancy

Dixson v. General Mills, a Delaware Corp., 79 C 832 a United States Federal District Court case. This case arose out of the children of Clarence and Nancy Dixson allegedly eating contaminated cereal products manufactured by General Mills, Inc. The Respondent filed the case, but did not answer interrogatories and did not appear for status hearing and had not produced samples of the contaminated product. The defendant in the lawsuit filed a motion to dismiss and on February 17, 1980, the case was dismissed pursuant to Federal Civil Practice Rule 35. The Count further alleges that Respondent failed to notify the Dixson's that their case had been dismissed and took no action to reinstate it, and that the claim is now barred. The Count alleges that as a result of the alleged acts of misconduct on behalf of Respondent he is guilty of the following:

a. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102 (a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objectives of his client through reasonable means in violation of Rule7-101(a)(2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101 (a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101 (a)(3) of the Illinois Code of Professional Responsibility; and

f. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

g. Conduct which tends to defeat the

administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

5. Count VIII of the Complaint alleges that during the pendency of the proceedings before the Attorney Registration and Disciplinary Commission in connection with the Dixson Complaint, the Attorney-Respondent submitted a letter to the Attorney Registration and Disciplinary Commission which stated that Nancy Dixson had fabricated the entire event upon which the claim against General Mills was based and further that the Attorney-Respondent during a sworn statement repeated his statements which were contained in his letter of August 7, 1986. The Count alleges that the letter and testimony and the statement of the Attorney-Respondent were false and were given with the intent to discrediting Nancy

Dixson. As a result of these acts the complaint alleges that the Attorney-Respondent is guilty of the following misconduct:

a. Conduct involving moral turpitude in violation of Rule 1-102 (a)(3) of the Illinois Code of Professional Responsibility;

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1-102 (a)(4) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

6. Count IX of the Complaint alleges that the Attorney-Respondent neglected the legal matter entrusted to him in that one, Madronica Clarke n/k/a Madronica Biddings had contacted him with a case against Ame-

rican Airlines, Inc. for employment-discrimination and that on August 10, 1984 the Respondent filed a complaint in the Circuit Court of Cook County in the matter entitled Madronica Clarke v. American Airlines, Inc., and Dianne Goronzik, 84 L 17182, and that ultimately the case was dismissed on August 12, 1985, for want of prosecution. On September 11, 1985, Respondent filed a Motion to Vacate the Order of August 12, 1985, scheduled a hearing on the Motion for September 26, 1985. Respondent did not appear at the hearing on the Motion to Vacate and the motion was denied. The Count further alleges that the Respondent did not notify Madronica Clarke (Madronica Biddings) of the dismissal of this case. As a result of these acts the Administrator alleges that the Respondent is guilty of the following acts of misconduct:

a. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objectives of his client through reasonable available means in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(3) of the Illinois Code of Professional Responsibility; and

f. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

g. Conduct which tends to defeat the

administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

7. Count X of the Complaint alleges that the Respondent neglected the legal matter entrusted to him in by Wanda Ferguson. She had retained him in October, 1984, for the purposes of obtaining a dissolution of her marriage from Julius Ferguson and a portion of the case was heard by the Court, but the divorce was never completed. On May 9, 1985, the case was dismissed for want of prosecution. The Count alleges that the Respondent did not notify Wanda Ferguson that the case had been dismissed and alleges that he failed to communicate with her though she made numerous telephone calls to Respondent and wrote one letter to him. The Complaint further alleges that the Respondent subsequently asked for an additional

$250.00 from her and he would then be able to complete the divorce. The sum of $250.00 was paid, but Respondent never completed the divorce. The Count alleges that as a result, the Attorney-Respondent is guilty of the following acts of misconduct:

a. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objectives of his client through reasonably available means in violation of Rule 7-101(a) (2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101 (a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or

damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(3) of the Illinois Code of Professional Responsibility; and

f. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

g. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

8. Count XI alleges that during the pendency of this cause before the Attorney Registration and Disciplinary Commission, the Attorney-Respondent submitted a response to the charge indicating that the complainant waivered in her desire to divorce Julius Ferguson, which the complainant denies. The Count alleges that the response to the charge by the Attorney-Respondent in this case is false. The Count alleges that as a result of these

acts the Respondent is guilty of the following misconduct:

a. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1-102 (a)(4) of the Illinois Code of Professional Responsibility;

b. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

9. Count XII alleges that the Respondent neglected a legal matter entrusted to him. The Respondent was retained to represent Milton White in a case entitled People of the State of Illinois v. Milton White, 85 C 13096 in the Circuit Court of Cook County. The

Count alleges that on January 6, 1986, the Respondent agreed to represent Milton White in the above referenced case, and that on January 6, he appeared in Court and entered his appearance. The Court entered an Order on January 6, continuing the case to February 4, 1986. The Count alleges that the Respondent failed to appear on February 4, February 7, February 13, February 21, April 23, May 1, May 9, May 16, and June 13, 1986. On May 9, 1986, due to Respondent's failure to appear, the Court appointed the Cook County Public Defender's office as co-counsel on the case and on June 13, 1986, the Court appointed the Cook County Public Defender as counsel for Milton White. The Administrator alleges that as a result of the acts of misconduct the Attorney-Respondent is guilty of the following:

a. Conduct that is prejudicial to

the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objectives of his client through reasonably available means in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101 (a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(3) of the Illinois Code of Professional Responsibility; and

f. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsible; and

g. Conduct which tends to defeat the

administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

10. Count XIII alleges that the Respondent neglected a legal matter entrusted to him. The Respondent was retained to represent H & W Towing in an attempt to purchase property at 5211 S. Prairie, Chicago, Illinois. The attorney was retained in September, 1985, and as of December 26, 1985, had taken no action regarding this purchase. The Count alleges that the Respondent failed to communicate with H & W Towing regarding the attempt to purchase this property and on December 26, 1985, H & W Towing terminated the attorney-client relationship. The Administrator alleges that as a result of these acts, the Attorney-Respondent is guilty of the following acts of misconduct:

a. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objectives of his client through reasonably available means in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(3) of the Illinois Code of Professional Responsibility; and

f. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

g. Conduct which tends to defeat the

administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

11. Count XIV alleges that during the pendency of this cause before the Attorney Registration and Disciplinary Commission the Attorney-Respondent submitted a false response when he responded to the complaint of Herbert Turner. The Administrator alleges that as a result of these acts, the Respondent is guilty of the following acts of misconduct:

a. Conduct involving moral turpitude in violation of Rule 1-102(a)(3) of the Illinois Code of Professional Responsibility;

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1-102(a)(4) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the

administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

12. Count XV alleges that on or about March 2, 1984, Louise Jones consulted with Respondent regarding his representation of her son Wynick Jones in an appeal of his conviction for the offense of murder in the Superior Court in California. The Count alleges that Louise Jones paid Respondent $2,300.00 as retainer, and that Respondent failed to provide any legal services to her son Wynick Jones. The Count alleges that as of January 23, 1986, Respondent was not licensed to practice law in California. The Count further alleges that the Attorney-Respondent filed a false response to the charge of Louise Jones contending that the money was a non-refundable retainer which Louise Jones denies. As a result of

these acts, the Administrator alleges that the Respondent has committed the following acts of misconduct:

a. Conduct that is prejudicial to the administration of justice in violation of Rule 1-102(a)(5) of the Illinois Code of Professional Responsibility;

b. Neglect of a legal matter entrusted to him in violation of Rule 6-101(a)(3) of the Illinois Code of Professional Responsibility;

c. Failure to seek the lawful objectives of his client through reasonably available means in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

d. Failure to carry out a contract of employment entered into with a client for professional services in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility;

e. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(2) of the Illinois Code of Professional Responsibility; and

f. Conduct which prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7-101(a)(3) of the Illinois Code of Professional Responsibility;

g. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

h. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

13. Count XVI alleges that the Attorney-Respondent delivered to H. Nasif Mahmoud a check in the sum of $1,908.40 on his account at Drexel National Bank, Chicago, Illinois, said check being payable to Helmsley-Spear of Illinois. Said Count further alleges that at the time he wrote the check the Respondent knew that he did not have sufficient funds to pay said check and that the check was subsequently dishonored and

returned "NSF". The Count alleges that as a result of these acts the Attorney-Respondent is guilty of the following acts of misconduct:

a. Conduct involving moral turpitude in violation of Rule 1-102(a)(3) of the Illinois Code of Professional Responsibility;

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1-102(a)(4) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

14. Count XVII alleges that as of August 30, 1985, Respondent had accumulated additional rent arrearage of $2,863.96 and had not made restitution of the check which was returned insuf-

ficient funds. Said Count further alleges that Respondent has not made restitution of the rental monies owed to Mr. Mahmoud and Mr. Charles Okolie his lessors. The Count alleges that as a result of these acts, the Attorney-Respondent is guilty of the following acts of misconduct:

a. Conduct involving moral turpitude in violation of Rule 1-102(a)(3) of the Illinois Code of Professional Responsibility;

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1-102(a)(4) of the Illinois Code of Professional Responsibility;

c. Conduct which has the appearance of professional impropriety in violation of Canon 9 of the Illinois Code of Professional Responsibility; and

d. Conduct which tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

ANSWER OR RESPONSE TO THE COMPLAINT

On November 29, 1988, the panel

allowed the Respondent to file his amended answer.

1. As to Counts I-V the Respondent neither admits nor denies any of the allegations of paragraphs 1 through 5 and demands strict proof of the same and states in his answer that he does not have any of the documents on which he can determine the accuracy of the dates and facts which are alleged in this counts.

2. As to Count VI the Respondent admits all of the factual allegations of Count VI, but denies that he did not inform David Turner or members of his family that the appeal was dismissed for want of prosecution and denies that his acts result in any misconduct.

3. As to Count VII the Respondent neither admits nor denies the factual allegations concerning the incident concerning the Dixsons children eating

the cereal, but admits that he did, on their behalf file a lawsuit against General Mills. The Respondent then neither admits nor denies the factual allegations concerning the dates on which actions and proceedings were occurring in the case, but admits that he took no action to reinstate the case, but denies that he did not inform the Dixsons of the dismissal.

4. As to Count VIII the Respondent admits that he wrote a written response to the charge of Clarence Dixson, but denies that his response is false.

5. As to Count IX Respondent denies that he consulted with Madronica Clarke concerning representation of this matter. Denies that she paid him $250.00 as a retainer, but admits that he filed the case on her behalf and that the case was dismissed for want of prosecution. He

denies however that he did not inform Madronica Clarke of dismissal, and denies that his acts resulted in any misconduct.

6. As to Count X Respondent admits that he was retained by Wanda Ferguson to represent her in a dissolution of marriage, but denies that she paid him $450.00 as a retainer. He admits that he filed the Complaint on her behalf but denies that he filed a Notice of Motion and Motion for Child Support Pendente Lite in the case, but however admits that he appeared on May 8, 1985, to argue the Motion which was granted. He likewise admits that the case came up on the regular call of cases for trial in the Chicago Daily Law Bulletin on May 9, 1985, and that he did not appear and thereafter the case was dismissed for want of prosecution. He denies that he did not contact or communicate with

Wanda Ferguson during the period of July, 1985 through July, 1986, and denies that he had any call or conversation with her in July, 1986, and denies that he indicated to her that he would for an additional sum of $250.00 conclude the dissolution of marriage. He denies that was paid $125.00 each by Wanda and Julius Ferguson on July 19, 1986, and denies that he had not advised her that the case had been dismissed.

7. As to Count XI the Attorney-Respondent admits that he did not pursue the dissolution of marriage of Julius and Wanda Ferguson, because Wanda Ferguson vacillated in her desire to divorce her husband and denies that this statement is false and that the letter response which he had given to the charge were false. He denies that his acts resulted in any acts of misconduct.

8. As to Count XII the Respondent admits all of the factual allegations of Count XII but denies that his acts resulted in any misconduct.

9. As to Count XIII the Respondent admits that he was retained by H & W Towing, and that as of December 26, 1985 had taken no action regarding the purchase of the property, but denies that he did not contact Mr. Turner during this time period. He admits that the attorney-client relationship was terminated by Mr. Turner on December 26, 1985, but denies that he did not return all of the documents to Mr. Turner and denies that his acts resulted in any acts of misconduct.

10. As to Count XIV the Attorney-Respondent admits that he submitted a response to the charge of H & W Towing and Mr. Turner, but denies that his response

was false and denies that his acts resulted in any acts of misconduct.

11. As to Count XV Respondent admits that he was retained by Mrs. Jones and paid the sum of $2,300.00, but denies that his letter of February 14, 1986, was false, wherein he states that the retainer was not to be refunded and was to retained by him for time and labor expended. Respondent denies that his acts resulted in any misconduct.

12. As to Count XVI the Respondent admits the bulk of the factual allegations of Count XVI but neither admits nor denies that he issued the check on June 2, 1985, which was later returned insufficient funds and neither admits nor denies that shortly after June 20, 1985 that said check was dishonored due to insufficient funds in his account. The Respondent denies that his acts resulted in acts of

misconduct.

13. As to Count XVII the Respondent denies that there was a rent accumulation of $2,863.96, but admits that he had not made restitution of the insufficient check and also admits that he vacated the premises on or about August 30, 1985, but denies that his acts resulted in any acts of misconduct.

Evidence Submitted and Findings of Fact

The Administrator filed in this cause a request to admit facts and genuineness of documents. The request to admit facts and genuineness of documents was filed on November 22, 1988 and the attorney Respondent, filed no response to the request and the request was deemed admitted by order entered January 5, 1989. The full request for admission of facts and genuineness of documents was admitted in evidence as Administrator's Exhibits 1 through 59 and

are set forth in the Administrator's Request which is attached hereto and made a part hereof.

Administrator's Exhibit 61 is a letter dated May 16, 1989, from Maura T. McGrath, Registrar of the Attorney Registration and Disciplinary Commission stating that James Bernard Bell was admitted to practice law in Illinois on August 13, 1979, and that he is not registered to pursuant Rule 756 and not now currently authorized to practice to law. (The record reflects that the Exhibit was introduced as Exhibit 61 but Mr. Cesario in discussing the Exhibit (page 51) indicates that it is Exhibit 60.)

Administrator's Exhibit 62 is a copy the pursuant to Illinois Supreme Court Section 761 filed January 26, 1987.

The Administrator first called Lance

Bracy. Mr. Bracy is employed by the Board of Professional Responsibility of the Supreme Court of Tennessee and was admitted to practice law in the State of Tennessee in 1962. He has been employed by the Board of Professional Responsibility since 1976. His title is Chief Disciplinary Counsel. A position he has held since 1979. Mr. Bracy is familiar with the respondent and was familiar with Order of Summary Suspension filed by the Supreme Court on April 3, 1980, suspending the license of James Bell for cause and also with the petition which was filed before the Tennessee Supreme Court to determine the extent of final discipline to be imposed upon Mr. Bell for his conviction of criminal charges. Mr. Bracy related that under Section 18 of the rules of the Supreme Court of the State of Tennessee, an attorney who is suspended or

disbarred is required to file an affidavit with the Board stating that he has notified his clients and the court and other attorneys of his suspension or disbarment and to further notify the board of all of the jurisdictions where he is admitted to practice law.

Examining Exhibit 9, Mr. Bracy stated that it was the affidavit of James Bell provided to the Supreme Court of Tennessee pursuant to the Section 18. In the affidavit Mr. Bell states that as of May 14, 1980, he was "admitted to practice in the United States District Court for the middle district of State of Tennessee; Chancery Court of Davidson County, Tennessee; Chancery Court of Shelby County, Tennessee; and the Circuit Court of Davidson County, Tennessee, and the Circuit Court of Shelby County, Tennessee." Mr. Bracy further testified that he

learned in 1986 that Mr. Bell was also admitted to practice in the State of Illinois and that Mr. Bell never informed the Board of Professional Responsibility of the Supreme Court of Tennessee that he was admitted to practice in Illinois.

Both Clarence and Nancy Dixson testified concerning Counts VII and VIII. Their testimony was that James Bell is Nancy Dixson's nephew, and that in March of 1977, the Dixson children, particularly, Phillip and Glen were eating a box of cereal manufactured by General Mills, which cereal contained glass and after eating the cereal the children had cuts in their mouths and were sick. This testimony was that they originally had retained Attorney Harvey Walner to represent them in this case, but that James Bell's mother convinced them to transfer the case to him and that they met in his

office to discuss the case and he agreed that he would represent them in this case. Clarence Dixson testified that after the meeting in 1977 concerning the case James Bell did not keep them informed of the status of the case, and they were not aware that the case had been dismissed. He also testified that on several occasions he and his wife had tried to contact James Bell concerning the case, but on each occasion Mr. Bell was elusive and evasive concerning the case and would simply say he was busy and would get back to them. (Record page 76, 77, 86). Clarence Dixson testified that James Bell did not inform them that the case had been dismissed in 1980, although he had talked with James Bell after 1980 concerning the case. On cross examination Mr. Dixson denied having made any arrangements with Mr. Bell concerning Bell's expenses in

flying back from Tennessee to Chicago during the pendency of this case. Mr. Dixson testified that most of the conversations concerning the case were between James Bell and his wife, Nancy, and that most of his information had been relayed from her. Nancy Dixson testified at the hearing on May 17, 1989, that she was present when her children ate the contaminated cereal and that she observed the injuries which they sustained. She testified that after the incident James Bell "showed up" and told them that he was the "best lawyer for the case". Thereafter she and her husband discharged Mr. Walner and retained James Bell to represent them in the case. She testified that a few months later James wrote them a letter stating that he contacted General Mills and that he would pursue the case further. She testified that it was at least a year

between contacts with James concerning this case. She attempted to contact him by writing to him and by telephone but never got adequate responses. She related that after James returned to Chicago, she eventually contacted him at his office in Chicago but could never get any response from him concerning the case and what had happened to it or what the status of the case was. During her examination Mrs. Dixson denied ever having told James Bell that the incident concerning the children was fabricated. Mrs. Dixson unequivocally stated that she did not talk to James Bell in 1979 and tell him that the lawsuit was fabricated.

H. Nasif Mahmoud testified at the hearing that on April 25, 1989. He and James Bell shared space at 1 North LaSalle Street, but, were not partners. Sometime during the time that Mr. Mahmoud

and Mr. Bell shared space, they came to learn that a Mr. Okolie who had been holding himself out as a lawyer, was actually not licensed to practice law, and that sometime in 1983 or 1984, his name was removed from the door and that thereafter James Bell began to get behind in his rent. On one occasion, Mr. Bell gave a check to Mr. Mahmoud which was returned by Mr. Bell's bank NSF. The check was payable to Helmsley-Spear and not Mr. Mahmoud. Helmsley-Spear is the real estate agency in charge of the building. Because of non-payment of rent Helmsley-Spear sued Mr. Mahmoud, Attorney Steven Brussard and Okolie for possession of the suite and the rent. He testified that in addition to the rent check which was returned NSF that Mr. Bell owed additional monies for rent for which he did not pay and no restitution had been made on any of

the amounts due.

On cross-examination, Mr. Mahmoud stated that he recalled the check being given to him by Mr. Bell and he being requested not to tender it until notified by Mr. Bell. He recalled Mr. Bell waiting on a fee from the Appellate Court on a case in which he was involved, and also recalled that the Appellate Court did not grant Mr. Bell all of the fees he requested but did not know the amount, which had been reduced or the exact amount Mr. Bell received in fees. He did not recall when he deposited the check or whether Mr. Bell gave him specific authority to deposit the check.

Madronica Biddings also testified that she had retained Mr. Bell to represent her in a case against American Airlines, concerning employment discrimination. Her case arose out of an inter-

view she had during which the representative for American Airlines wrote down that she was a "bitch". She testified that she met with James Bell in October, 1983, at his office at 1 North LaSalle, and that he agreed to take the case, that he couldn't guarantee anything, but he would try. She indicated that she paid him a retainer of $250.00 at that time. She testified that after that meeting she called Mr. Bell perhaps once a month to find out what was happening with her case, and in total she contacted him about 10 times concerning her case, but did not have any contact with him after September, 1985. At that time, Mr. Bell told her that the case was to be going to Court and that she might have to testify. She testified that she called the court herself to find out what happened to her case and found out that it was "DWP'd". She

testified that even up to the date of the hearing before the Attorney Registration Disciplinary Commission James Bell had never notified her of the status of her case. On cross-examination, Mrs. Biddings admitted that at the conference she had with James Bell he informed her that there were numerous problems with this lawsuit and that he was not very optimistic about obtaining any results. She also testified on cross-examination that she met James Bell at his office approximately 4 times after the initial conference.

Herbert Turner, the owner of H & W Towing, also testified on the April 25 hearing date. He testified that in 1985 he retained James Bell to represent him in various matters. He wanted James Bell to represent him as a result of automobile accident claims and also to represent him before the City of Chicago and the Chicago

Board of Education concerning the building he was leasing. According to Mr. Turner at the first meeting Mr. Bell indicated to him that he could handle the problem and that he would "take care of it". He turned over to James Bell the lease, the appraisal and other documents related to the property in October, 1985. He stated that Mr. Bell handled on of the accident claim problems for him successfully, but did not do anything concerning the property and as a result Mr. Turner was not able to purchase the property. Because he had failed to do anything on the problem, Mr. Turner wrote him a letter on or about December 6, asking him to account for the monies that he had paid being $650.00 and to return the check for $400.00 because nothing had been done on the case. He testified on cross-examination that after retaining James Bell

to represent him that it was very difficult to contact James Bell and that he could not get information from James Bell.

Wanda Ferguson also testified at the hearing on the 25th of April. She testified that she met James Bell in September, 1984, and retained him to represent her in a dissolution of her marriage. She paid him $450.00 which was the retainer amount he requested. In November, 1984, she returned to his office after having attempted to reconcile her differences with her husband with no success. In November, James Bell filed the Petition for Dissolution and after filing the Petition notified Mrs. Ferguson that he would need an additional $125.00, which according to her testimony she paid. There was one Court hearing being in February of the following year. But in February they did not actually go before

the Judge because of some problems with the case. A hearing was then scheduled for March, but neither Mr. Ferguson nor his attorney showed for the hearing and the case was continued. There were other continuances of the case, and finally on July 23, 1985 there was a hearing before the Court. At that time the Court granted Mrs. Ferguson temporary custody and temporary child support. After that hearing, Mrs. Ferguson did not hear from James Bell again until July, 1986. She testified that she made numerous attempts at contacting Mr. Bell, but either could not get him, or he would respond that he was very, very busy and would get back to her. When she finally reached him on July 14, 1986, James Bell did not make any statements to her concerning the pending dissolution proceedings. In the conversation of July 14, 1986, Mr. Bell told her for an addi-

tional $250.00 he could have the divorce completed within a month. Subsequent to that telephone conversation, both she and her husband paid James bell $125.00 each and he was instructed to complete the divorce. According to Mrs. Ferguson, her ex-husband paid the money to Mr.Bell in August, and thereafter she continued to call Mr. Bell to monitor the divorce. At one point in September, during a telephone conversation, he told her that he was having the document typed up and would get the ball rolling. James Bell never obtained a dissolution of marriage for Wanda Ferguson. Ultimately, her ex-husband retained his own attorney and obtained the divorce. On cross-examination, Mrs. Ferguson stated repeatedly that she did not waiver in whether or not she wanted this divorce.

Also testifying at the hearing on

April 25, 1989, Louise Jones, the mother of Wynick Jones who was convicted of murder in the State of California. She testified that she first met James Bell in March, 1984 and at that time she presented Mr. Bell with the transcript of her son's murder trial which he was suppose to review and then tell her if he would take the case. For reviewing the transcript he received a fee of $300.00. Mr. Bell later called Mrs. Jones and scheduled an appointment with her. According to her testimony at the conference, he indicated to her that it "seemed like a real good case" but he would have to do some checking concerning California law. He at that point requested a retainer of $4,000 which she indicated to him that she did not have and approximately one week later went back and paid him $2,000. She had the receipt for $2000 paid on March

29, 1984. Thereafter, Mrs. Jones contacted Mr. Bell for the return of the retainer, but Mrs. Jones could never contact Mr. Bell to determine what the status of the appeal was, or to get a refund or to get the transcript returned. She testified that she asked Mr. Bell to refund the $2,000 since she was unable to raise the balance of the retainer and that in no time did she tell him that he could keep the $2,000 as fee.

Based on the testimony of Lance Bracy and the documentary evidence admitted into evidence pursuant to the request to admit facts, all of the factual allegations of Counts I through IV are proven by the administrator. The issue to be determined as to Counts I through IV is whether or not they, in and of themselves, can be grounds of imposition of disciplinary action in the State of Illinois. The

record reflects that the respondent was charged, by indictment, in the middle district of Tennessee of December 11, 1979, and was admitted to practice in the State of Illinois on August 13, 1979 (Exhibit ex. 61). Certainly, assuming that conduct prior to ones admission to practice law in the State of Illinois is subject to disciplinary action by the Supreme Court, then the conduct engaged in by Mr. Bell warrants discipline and the conduct would be in violation of Rule 1-102(a)(3), 102 (a)(4) and Canon 9 of the Illinois Code of Professional Responsibility. Based on Mitan (1979) 75 Ill. 2d 118, 25 Ill. Dec. 622, 387 N.E. 2d 278 and Loss (1987) 116 Ill. Dec. 160, 119 Ill. 2d 186 518 N.E. 2d 981 it would appear that these matters are relevant for inquiry in Attorney Disciplinary proceedings.

As to Count V, under the rules of the

Supreme Court of Tennessee James Bell was to provide an Affidavit to the Supreme Court indicating all jurisdictions in which he was licensed to practice. Having only been admitted to practice in the State of Illinois on August 13, 1979, and having filed this Affidavit in May of 1980, it is obvious that the respondent intentionally omitted this fact from the Affidavit, so as to avoid the State of Illinois finding out of his conviction in the State of Tennessee and his suspension from practice in the State of Tennessee. At all times, relevant to this hearing, Rule 763 was in full force and effect. Rule 763 provides, in part, "If an attorney licensed to practice law in this State and another State is disciplined in the foreign State, he may be subjected to the same discipline in this State, to run concurrently with the discipline in the

foreign State....". By failing to inform the State of Tennessee that he was admitted to practice in the State of Illinois, the State of Tennessee did not advise the State of Illinois of his suspension. This conduct violates Rule 1-102(a)(3) and 1-102(a)(4) and in addition Canon 9 of the Illinois Code of Professional Responsibility.

Counts VI, VII, IX, X, XII, XIII, XV all allege neglect of a legal matter by the respondent, James Bell. Without commenting on the viability of any of the above lawsuits, the evidence clearly shows that the respondent neglected all of these matters.

Counts VI, VII, IX, X, XII all involve matters in which substantive rights of individuals were involved, and where the case, whether it be a case in the Federal District Court, the Circuit

Court of Cook County, or the Appellate Court of Illinois was dismissed because of respondent's failure to present any case. In most of the Counts, the respondent was paid a retainer, and after him being paid the retainer began doing work, but did not see any of the cases to completion. Conduct of this type certainly shows a pattern of neglect and violates Rule 6-101(a)(3) 7-101(a)(2), 7-101(a)(3) and is conduct which is prejudicial to the administration of justice in violation of Rule 1-102(a)(5).

Counts VIII, XI and XIV involve the respondent's answers to specific charges made during the pendency of this case. Specifically, Count VIII concerns the respondent's written letter relative to the charge of Clarence and Nancy Dixson, Count XI concerns respondent's answer to the charge of Wanda Ferguson and Count

XIV concerns the charge of Herbert Turner and H & W Towing. In each Count, the Administrator alleges that the attorney's response is false, and by submitting a false response to the charge, the attorney-respondent has committed acts involving moral turpitude in violation of Rule 1-102(a)(3) and Rule 1-102(a)(4).

As to the response to the charge of Clarence and Nancy Dixson, both Clarence Dixson and Nancy Dixson testified unequivocally that the facts given to James Bell concerning the cereal incident were, in fact, true, and were not fabricated by Nancy Dixson. The Administrator has proven the allegations of Count VIII.

As to Count XI, concerning the charge of Wanda Ferguson, it does appear from the testimony that at the beginning, there was concern about the parties being able to reconcile, and, in fact, James Bell

suggested to Mrs. Ferguson that she and her husband attempt reconciliation and they, in fact, attempted reconciliation.

The letter, (Administrator's Exhibit 35) states "...As this matter wound its way through the Court system, Ms. Ferguson vacillated with each day with regards to her desire to procure a divorce from her husband." The facts on this Count have not been proven by clear and convincing evidence.

Likewise, Count XIV alleges that the response of James Bell to the complaint of Herbert Turner is false. The administrator alleges that respondent states "that he was unable to represent Turner on H & W Towing because respondent stated that he had received insufficient information from Turner. Respondent also stated that after Turner terminated their attorney-client relationship, respondent returned all

documents to Turner." It is difficult to determine what the administrator means in Count XIV paragraph 2 of the Complaint, the only reference in the letter of the respondent. (Administrator's Exhibit 47) is the following:

> "...Mr. Turner was unable to provide me with details concerning either automobile accident due to the fact that he was not personally involved in either. Nor could he assist me in contacting his employee-driver in either matter due to the fact that he had released each..."

However, this is the only reference to Mr. Turner not providing information. On direct examination, Mr. Turner testified as follows:

"Q. What happened after that meeting?

A. The first meeting?

Q. Yes.

A. He appeared in Court. And the matter was resolved. Well, the first

meeting, I retained him. I gave him $650.00 as such. And then he represented me in Court. And then I met him at the courthouse., and that matter was was resolved." (Record page 166.) After that Mr. Turner could not contact Mr. Bell and terminated his services by letter of December 26, 1985. Mr. Turner did testify that he did not receive any documents back from James Bell, nor did he receive a refund (Record page 170). Further on direct examination Mr. Turner states that he did know what information Mr. Bell was talking about, but that does not establish that there wasn't information which was missing or incomplete from the file. Further on cross-examination, concerning the issue of missing or incomplete documents, the following colloquy occurred:

"Q. I think you were asked, was there anything else that you could have

given me that would have helped in my representing you in the matters that were pending in the Circuit Court as well as the purchase property at which you ran your business?

Mr. Cesario: "Objection, I believe that is a mischaracterization of the testimony.

Chairman Beckman: overruled.

The Witness: Well I think that Mr. Cesario asked me in reference to the property, it wasn't in reference to the Circuit Court. I gave you every piece of document, piece of paper and documentation in my file, gave you the whole file including the lease which had about - - the lease was a standard - - well not standard. But it was a 50-page lease written on both sides, very voluminous amount of paper work."

Thus the allegation concerning the

documentation is not established by the evidence. Secondly, Mr. Bell indicates that he mailed the documents to Mr. Turner after he was discharged, and Mr. Turner states that he did not receive anything from Mr. Bell. The evidence does not establish that Mr. Bell did not, in fact, mail the documents, only that Mr. Turner did not receive them. Thus the allegations of Count XIV are not proven.

Count XV involves a very unusual and unique situation. Mr. Bell was retained to represent Wynick Jones, for a conviction in the State of California, however, the respondent was not admitted to practice in the State of California, and did not inform Mrs. Jones, the individual who retained him, that he was not admitted in the State of California and did not indicate that he had co-counsel in the State of California. Mrs. Jones indicated that

the agreement between her and the respondent was that until the entire $4,000 retainer had been paid, Mr. Bell would not do any work on her son's file, and since she could only come up with $2,000 assumed that he had done nothing and asked for the refund since she was unable to come up with the additional $2,000. In his response, Mr. Bell indicates that he did approximately 50 hours of legal research concerning the procedural and substantive law of California in his representation of Wynick Jones, however, it is unclear, what, if anything respondent would have been able to do having completed this research. Ultimately, respondent produced no documents, on behalf of Mrs. Jones, and did not file any documents in the Court in California, at least to the knowledge of this Panel, and thus the allegations of Count XV are

proven, by clear and convincing evidence and the Panel finds that the attorney-respondent is guilty of conduct described in Paragraph 8 of that Count.

Counts XVI and XVII involve the respondent tendering an NSF check payable to Helmsley-Spear to claimant H. Nasif Mahmoud, and non-payment of rent and failure to make restitution. The testimony in this regard is lacking. At the beginning of his testimony, Mr. Mahmoud testified that the check was given to him in payment of rent, and that when given to the landlord was returned by the respondent's bank as not having because of insufficient funds. On cross-examination, however, he indicated that he does recall Mr. Bell telling him at the time the check was given, that it should not be deposited until a certain date, and also recalls Mr. Bell being very upset when the

Appellate Court reduced his fee request in a case. This, apparently, is what caused the insufficient funds, and no illegal, immoral or dishonest motive is attached to that.

Count XVII further alleges that Mr. Bell still owes rent to Mr. Mahmoud and Okolie and has not made restitution of this money. As a general rule it is not the disciplinary commission's concern whether an attorney-respondent had made restitution and we note that the claimants, being Mr. Mahmoud and Mr. Okolie have adequate recourse at law if James Bell owes them funds. Based on the information in evidence before us, it would appear that Mr. Bell was not in a position financially to pay the funds and no illegal dishonest or fraudulent motive is attached to that. Therefore Counts XVI and XVII are not proven.

Recommendation

The Counts of this Complaint which have been proven by the Administrator, are serious, and the conduct of respondent has resulted in injury and harm to clients and to the integrity of the Profession of law. Further, it must be noted that the respondent has failed to comply with even the basic rules of the Supreme Court concerning disciplinary matters. The respondent's first answer was filed late, and does not answer any allegation of any paragraph of the administrator's complaint, and after being stricken, the respondent filed an amended answer, which only answers some of the charges in the manner required by the rules. Further, the respondent has failed to appear for deposition, has failed to file a Rule 253 Report and even failed to appear for the continued hearing on May 17, 1989. The

respondent's neglect of this matter and dilatory tactics have caused the administrator to have to file not one, but two motions for sanctions, and have caused needless delay in these proceedings.

It should also be noted that the Respondent is not registered pursuant to Rule 756, although the administrator does not set this out as any additional grounds for misconduct.

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public and maintain the integrity of the legal professional and of the Courts. The proven allegations of this Complaint, the seriousness of the charges, and the respondent's failure to offer any evidence in mitigation, or any defense to the charges, leave the panel to but one conclusion.

It is our recommendation that the

respondent, James B. Bell be disbarred.

Charles T. Beckman

Dennis S. Nudo

Joseph C. Polito

Filed September 15, 1989

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | Adminis- |
| JAMES BERNARD BELL, | ) | trator's |
| | ) | No. |
| Attorney-Respondent, | ) | 88 CH 148 |
| | ) | |
| No. 3123906. | ) | |

REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

After full consideration and review of all matters of record, the Review Board concurs with the findings of fact and conclusions of law of the Hearing Board and recommends that the Respondent be disbarred.

Respectfully submitted,

Martin L. Silverman,
Acting Chair
James L. Coghlan
William F. Costigan
Robert J. Downing
Robert J. Egan
Marshall A. Susler

Members, Review Board

Member Chester L. Blair and Herbert J. Bell did not participate.

Date Decided: June 8, 1990

Filed Jun-8 1990

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706

July 13, 1987

Mr. James Bernard Bell
Attorney at Law
3262 Roesner Drive
Markham, IL 60426

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

In re: James Bernard Bell, M.R. 4217

The rule to show cause that was issued pursuant to Supreme Court Rule 761 on February 9, 1987, is discharged.

Goldenhersh, J., took no part.

JH/cjv
cc: Att. Reg. & Disc. Comm. (Chicago)

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

March 30, 1992

Mr. James Bernard Bell

11031 s. Sangamon St.
Chicago, IL 60643

No.71175 - In re: James Bernard Bell.
Disciplinary Commission.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on April 9, 1992.

BEFORE THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

IN THE MATTER OF: ) No.
JAMES BERNARD BELL, ) 88-CH-148
Attorney-Respondent )

REPORT OF PROCEEDINGS had in the above-entitled matter before a Panel of the Hearing Board of the Attorney Disciplinary Commission, on the 25th day of April, A.D., 1989, commencing at the hour of approximately 10:30 a.m.

Members of Hearing Panel:

Mr. Dennis S. Nudo
Mr. Charles T. Beckman (Chairman)
Mr. Joseph C. Polito

Appearances:

Mr. John R. Cesario and
Mr. Samuel J. Manella
(Attorney Registration &
Disciplinary Commission)
203 North Wabash Avenue
Chicago, Illinois 60601,
appeared on behalf of the
Administrator

Mr. James Bernard Bell,
appeared pro se

MR. BELL: There is a preliminary matter that I want to take up if I can.

CHAIRMAN BECKMAN: Certainly.

MR. BELL: Again I will renew my motion for a continuance. I had, up until today, a search for two files that relate to the counts of this matter and I was unable to find -- I think it's the Ferguson and, if I'm not mistaken, Jones file. And it's my understanding, I believe, that those files are in the possession now of the Administrator and have been for some time.

I'm told that there was an effort to return the files to me by way of certified mail and that was not claimed. That's what I'm told. I don't recall receiving any indication that the post office or anyone else was holding a package for me. And because of that,

because the files that I would need to prepare have been in the possession of the Administrator, I would request time to at least review those files before proceeding any further.

MR. CESARIO: In response, I would just state that the matter was scheduled for hearing on this date. The Administrator answers ready, and we do



have witnesses ready to proceed and testify in this matter. The Administrator did make efforts to return some documents to Respondent.

MR. BELL: I would also add that those files were produced or tendered to the Administrator as a result of a subpoena served upon me by the Administrator directing me to bring certain files and surrender them to the Administrator. And that was done.

MR. POLITO: How long have these files been in the possession of the Administrator?

MR. BELL: I'm not really certain. I know I had to bring files in on about four different occasions, three or four occasions I think. I raised this issue before at previous hearings that were had where I testified before the Administrator or the counsel for the Administrator. And I raised the issue of not having received all of the files that I had tendered to the Administrator.

I was told -- On the first occasion, first and/or second occasion that I asked about the matter. I was told that I had received everything. I asked that there be a further



check. I was told that there would be.

For some reason, I thought I had

the files. I searched for them, and I recall having some returned and some not returned. And I thought I had all of them for some time. So I'm not really sure how long they have had them. But it's been a good while.

MR. POLITO: Can I ask you why you didn't make copies of everything you submitted to the Administrator?

MR. BELL: I really don't have a reason. I saw the proceedings as requiring me to bring in files, surrender those files to the Administrator. I was told that, within a short period of time, they would be returned to me.

MR. POLITO: Can I ask you, if these files, certain files in your mind, are still in the possession of the Administrator, why you haven't made some type of motion before the Hearing Panel before now to order the Administrator to return

files to you if you need them to prepare for trial?

MR. BELL: Because up until recently I thought I was in possession of those files. It



was just a matter of me locating and finding them.

MR. POLITO: When did you discover that you were not in possession of these files, when in time?

MR. BELL: I think this weekend -- well, I knew I was -- The time in which I focused in on these particular files and made my last effort to locate them was this weekend. I mean, I have looked for them before and searched for them and raised the issue with the Administrator. And I have conducted a search for them on several occasions.

CHAIRMAN BECKMAN: The motion for

continuance, which is really a second argument on the same motion, will be denied. The Administrator will proceed at this time.